Supreme Court, U.S.
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In The Supreme Court of the United States

JAMES CAREY WOOD,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

On Petition for a Writ of Certiorari to the North Carolina Court of Appeals

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PETITION FOR A WRIT OF CERTIORARI

BEST AVAILABLE COPY

James Carey Wood
Pro Se Petitioner
1309 Stevens Creek Road
Fries, Virginia 24330
(276) 744-2977

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

QUESTIONS PRESENTED

I. WHETHER THE STATE'S RANDOM, SUSPICIONLESS LICENSE CHECKPOINT VIOLATED THE CONSTITUTIONAL SAFEGUARDS UNDER *MICHIGAN V. SITZ.*

II. WHETHER PETITIONER WAS TWICE PUT IN JEOPARDY WHEN HE PLED GUILTY TO MISDEMEANOR DRIVING WHILE IMPAIRED BEFORE A DISTRICT COURT JUDGE, THE COURT ACCEPTED THE PLEA, RENDERED A VERDICT, AND THE STATE VOLUNTARILY DISMISSED THE MISDEMEANOR CASE PRIOR TO A SENTENCING HEARING, AND PROSECUTED HIM ON HABITUAL DRIVING WHILE IMPAIRED ARISING OUT OF THE SAME FACTS.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JAMES CAREY WOOD,
Petitioner

v.

STATE OF NORTH CAROLINA

ON PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Petitioner James Wood respectfully petitions for a writ of certiorari to review the order of the North Carolina Supreme Court denying petitioner's petition for discretionary review and the judgment entered by the North Carolina Court of Appeals in this case.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals (App.1–App.8)[1] is unpublished, 2004 WL 1191901 (N.C.App.). The order of the North Carolina Supreme Court denying Petitioner's petition for discretionary review (App.

[1] "App." Refers to the separately bound appendix to the petition for a writ of certiorari.

10–App.12) is reported at 358 N.C. 739, 602 S.E.2d 682 (N.C. 2004).

JURISDICTION

The Judgment of the North Carolina Court of Appeals was entered on June 21, 2004. The North Carolina Supreme Court denied Petitioner's petition for discretionary review on August 12, 2004 (App.10-12). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution, Amendment IV, provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..." This Court has laid out strict guidelines for an exception to the requirement that there be an individualized suspicion when the harm was the "immediate, vehicle-bound threat to life and limb" of a drunk driver in *Sitz*. This Court has also circumscribed the unbridled discretion of a checkpoint in *Edmond* that attempted to go further and use suspicionless detentions for general crime control purposes.

Yet, some members of this Court have stated in dicta that there is not a problem with the propriety of using suspicionless detentions for the general motor vehicle law enforcement even when it does not involve the immediate threat to life and limb that the drunk driver posed in *Sitz*. This has left our nation with a hodge-podge of different standards being applied with perverse logic. In North Carolina, Law Enforcement Officers may use an even lower standard than that set out in *Sitz* with an even greater intrusion, just to check on whether a person's Drivers License may have expired.

The United States Constitution, Amendment V, provides: "No person shall be ..... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; ....."

The United States Constitution, Amendment XIV, provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

Resolution of the questions presented here will largely determine the true existence of an individual's Fourth Amendment right against unreasonable searches and seizures and an individual's Fifth Amendment right not to be twice tried for the same offense.

Petitioner James Carey Wood respectfully petitions this Court to grant his writ of certiorari to review the Court of Appeals' opinion in the matter of *State v. Wood* filed June 1, 2004, on the basis that the opinion has decided an issue that is an important question of federal law that has not been, but should be, settled by this Court and has decided another issue that is an important federal question that conflicts with relevant decisions of the United States Supreme Court.

Petitioner James Carey Wood was charged on August 26, 2000, with Misdemeanor Driving While Impaired. On September 12, 2000, Petitioner appeared in Forsyth County District Court before the Honorable Chester Davis and, when

arraigned by the Assistant District Attorney, he pled guilty. After Petitioner entered a guilty plea, the clerk recorded, on both the Court minutes and the judgment, a plea of guilty and a verdict of guilty. (App.33-34). During the sentencing hearing, after the plea and verdict had been entered, but before Judge Davis had entered a judgment, the State realized that they wished to proceed on felony charges instead and moved to strike the entry of plea made by the Petitioner. (App.25). Judge Davis denied the motion to strike the Plea, and the District Attorney elected to take a voluntary dismissal of the charge *after* the Petitioner had entered his plea of guilty and the same had been recorded by the Clerk, but prior to Petitioner's final sentencing. (App.25).

The State subsequently prosecuted Petitioner in Forsyth County Criminal Superior Court for a Felony Habitual Driving While Impaired charge based on the same offense. On January 11, 2002, nunc pro tunc, December 13, 2001, the Honorable Henry E. Frye, Jr. denied Petitioner's Motion to Dismiss based on double jeopardy. (App.17). In order to deny the motion, the Court allowed the State to orally modify the official records of a court of a different Jurisdiction, the District Court records, by parole evidence introduced in a Superior Court hearing. (App.18-49).

The Superior Court made a clearly erroneous finding, based upon oral evidence which contradicted the official District Court record. On December 8, 2002, the Honorable William Z. Wood, Jr. denied Petitioner's Motion to Suppress for lack of articulable suspicion. (App.52). On December 10, 2002, pursuant to a plea agreement that preserved his right to appeal these issues, Petitioner pled guilty to Habitual Driving While Impaired. Petitioner gave Notice of Appeal in open court on December 10, 2002 and filed a Notice of Appeal on December 17, 2002. In an unpublished opinion filed on June 1, 2004, the North Carolina Court of Appeals concluded that the trial court did not err. (App.1-9).

Petitioner filed a petition for discretionary review to the North Carolina Supreme Court on June 16, 2004. The North Carolina Supreme Court denied Petitioner's petition for discretionary review on August 12, 2004. (App.10-12).

In support of this petition, Petitioner shows the following:

REASONS FOR GRANTING THE PETITION

I. THE STATE'S SUSPICIONLESS DETENTION OF PETITIONER AT A CHECKPOINT SET UP TO AID IN GENERAL ENFORCEMENT OF THE LAW RELATIVE TO THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES WITHOUT BALANCING THE GRAVITY OF THE HARM AGAINST THE INTRUSION BY THE GOVERNMENT, VIOLATED THE CONSTITUTIONAL SAFEGUARDS UNDER *MICHIGAN V. SITZ*

The Court of Appeals erred in ruling that the State's suspicionless detention of Petitioner at the license checkpoint did not violate Petitioner's Fourth and Fourteenth Amendments. The Fourth Amendment protects individuals from unreasonable search and seizure. U.S. Const. Amend IV. The Fourth Amendment imposes a "reasonableness" standard upon the exercise of discretion by government officials, which includes law enforcement agents, to ensure the privacy and security of citizens against arbitrary invasions. *See Delaware v. Prouse*, 440 U.S. 648, 654 (quoting *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978) (quoting *Camara v. Municipal Court*, 387 U.S. 523 (1967)). For suspicionless stops to be reasonable under the Fourth Amendment, the checkpoint must address a specific, grave

harm and the checkpoint must be narrowly tailored in scope to meet that harm.

When a vehicle is stopped at a checkpoint, a Fourth Amendment "seizure" occurs. *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990) (citing *Martinez-Fuerte, infra*, at 556; *Brower v. County of Inyo*, 489 U.S. 593 (1989)). Consequently, when there is a seizure, a law enforcement agent's conduct must be assessed by balancing the intrusion on the person's Fourth Amendment rights against the promotion of legitimate governmental interests. *Id.* Stopping Petitioner's vehicle and detaining Petitioner constituted a "seizure" within the meaning of the Fourth Amendment, *even if* the purpose of the stop was limited and the detention that results is brief. *Prouse* at 653 (citing *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976)); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

In a series of cases involving border patrol checkpoints in the 1970's, the United States Supreme Court created an extremely limited exception to the probable cause requirement of the Fourth Amendment and to the reasonable suspicion requirement promulgated by the Court in *Terry v. Ohio*, 392 U.S. 1 (1968). In *Almeida-Sanchez v. United States*, the Court struck down roving border patrol searches conducted without consent and operated within the interior of the United States, even though there was a grave concern for national security. 413 U.S. 266 (1973). Two years later, in *Unites States v. Brignoni-Ponce*, the Court expanded its holding from *Almeida-Sanchez* and held that roving border patrols to curb illegal immigration were valid only if the officer had a specific and reasonable suspicion to justify the stop. 422 U.S. 873 (1975). "Officers could stop motorists at random for questioning, day or night . . . without any reason to suspect that they have violated the law." *Id.* at 883. This Court, in *Brignoni-Ponce,* noted that its decision was based on: 1) the important national interest the government had at

stake in protecting the nation's borders and controlling illegal immigration; 2) the brief, one-minute length of the stop; and 3) the absence of practical alternatives for policing the border. *Id.* at 881.

This Court has balanced the intrusion of an individual's Fourth Amendment's rights with the promotion of a legitimate governmental interests in the context of checkpoints on various occasions. In 1990, this Court addressed the constitutionality of sobriety checkpoints in *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990). *Sitz* held that sobriety checkpoints were constitutional due to the gravity of the drunk driving problem and the immediate, imminent, and directly correlated, risk of harm posed by drunk drivers. 496 U.S. 444 (1990). The stops in *Sitz* were brief and suspicionless, targeted to detect signs of intoxication and remove impaired drivers from the road. *Id.* at 447-48. The Court found that the checkpoint officers did not use individual discretion since they adhered to guidelines that mandated checkpoint operations, site selection, and publicity. *Id.* at 447. The officers adhered to the guidelines by stopping every vehicle, and the average delay per vehicle was *only twenty-five seconds*. *Id.* at 448. To determine the checkpoint's validity, this Court employed the balancing test that it set forth in *Brown v. Texas*. 443 U.S. 47 (1979). *Brown*, concluded that determining:

> the reasonableness of seizures that are less intrusive than a traditional arrest . . . involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty. *Id.* at 50-51.

This Court in *Sitz* balanced the magnitude and severity of the drunk-driving problem with the slight objective intrusion to motorists for 25 seconds, "measured by

the duration of the seizure and the intensity of the investigation." *Id.* at 452. In addition, the Court found that the checkpoint guidelines diminished the subjective intrusion to motorists since the guidelines minimized the officers' discretion and motorists could visibly see signs of the officers' authority. *Id.* at 452-53. The Court concluded its opinion by finding that the balancing test weighed heavily in favor of the government's specific and compelling interest in preventing drunk driving, which posed an "immediate, vehicle-bound threat" to the public, and was not a generalized law enforcement purpose. *Edmond*, 531 U.S. at 43.

Similarly, this Court approved highway checkpoints to detect illegal aliens in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). The checkpoints in *Martinez-Fuerte* were located on major United States highways at the Mexican border. The Court addressed in detail the "formidable law enforcement problems" presented by the stream of illegal immigrants entering the United States. *Id.* at 551-554. In *Martinez-Fuerte*, the Court balanced the interest in controlling illegal immigrants with the imposition on motorists and determined that the Government had a compelling interest to police the United States border. *Id.* As such, the checkpoints in *Martinez-Fuerte* were held constitutionally permissible given the difficulty of controlling immigration at the border, the impracticality of assessing individual cars otherwise, and the degree of intrusion by the stops. *Id* at 556-64.

In *Delaware v. Prouse*, *supra*, this Court invalidated a discretionary, suspicionless stop for checks for driver's license and vehicle registration by Delaware Highway Patrol. The Court observed "no empirical evidence indicat[ing] that such stops would be an effective means of promoting roadway safety." *Sitz* at 454. In fact, this Court further noted that common sense dictates that a large percentage of

licensed drivers would be stopped in an attempt to find one unlicensed operator. *Prouse* at 659-60. Hence, this Court disapproved the license stops of *Prouse*. More specifically, the Court in *Prouse* held:

> except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

This quote speaks to the exact situation at hand. Without articulable and reasonable suspicion that Petitioner was unlicensed or that his automobile was not registered, or that either the vehicle or Petitioner were otherwise subject to seizure for violation of law, Petitioner was stopped and detained to check his license and registration. *Prouse* has already held that such a detention absent articulable and reasonable suspicion is unconstitutional. *Prouse* provides that this Court "would not credit the 'general interest in crime control' as a justification for a regime of suspicionless stops." *City of Indianapolis v. Edmond*, *infra*, at 41 (quoting *Prouse* at 659). Moreover, *Prouse* invites States to develop a *method* for spot checks that "involve less intrusion." *Prouse* at 663. The State in the case at hand has ignored *Prouse's* suggestion by failing to develop *any* method that involves less intrusion. Rather, they employed a method that serves to detain and seize every person who passes through the checkpoint. The State has acted in direct contravention to the law in *Prouse*. In the current case the Officers had the discretion at the Checkpoint to allow driver's with driver license issued by Canada (and white) to pass through, but

arbitrarily detain a driver who produced a valid driver's license issued by Mexico.

A more recent United States Supreme Court case has provided even further guidance on this issue. In 2000, this Court ruled in *City of Indianapolis v. Edmond* that suspicionless detention at a checkpoint is permissible under the Fourth Amendment when there is a specific and compelling interest that poses an "immediate, vehicle-bound threat" to the public, and *not* a generalized law enforcement purpose. 531 U.S. 32, 38 (2000). *Edmond* held as unconstitutional a checkpoint for narcotics detection, because the checkpoint had a primary purpose of general crime prevention; the Court has never indicated approval of such a generalized primary purpose. *Id.* at 41. However each State is now formulating different standards for defining what is General Crime Control Purpose under the 4th, Amendment to the United States Constitution. *Edmond* further recognized that there are very limited circumstances that are exceptions to the general rule that "a seizure must be accompanied by some measure of individualized suspicion." *Id.*

Even though the officers in *Edmonds* adhered to written directives, selected checkpoint sites weeks in advance, conducted the checkpoints during daylight hours, and identified them with lighted signs, the Court found the drug control purpose of the checkpoint to be vastly different from the grave highway safety concern it upheld in *Sitz*, which involved "immediate, vehicle-bound threat to life and limb." *Id.* at 35, 43. This Court also determined that proof of legitimate "programmatic purposes" is required when deciding whether a checkpoint program is constitutional. *Id.* at 45. The Court warned that if the general "ultimate purpose of arresting those suspected of committing crimes" was a sufficient purpose, "there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose." *Id.* at 42. The

Edmond court refused to approve a program "whose primary purpose is ultimately indistinguishable from the general interest in crime control." *Id.* at 44.

A. The license checkpoint in the case at hand violated the Fourth Amendment

The North Carolina Court of Appeals should have ruled that the State failed to put on any evidence that a driver driving without a license, is like a drunk driver, and poses an "immediate, vehicle-bound threat". This Court, in *Edmond*, invalidated a checkpoint *solely* because its primary purpose was impermissible under Fourth Amendment analysis. *Id.* at 42. This Court in *Edmond* recognized the primary purpose of checkpoints to be their distinguishing feature, and a checkpoint with an impermissible purpose will be proscribed "even though the challenged conduct may be outwardly similar" to conduct by officials at permitted checkpoints. *Id.* at 47. The Court held that the checkpoint's primary purpose of checking for narcotics was "indistinguishable" from general crime prevention thereby rendering the checkpoint unconstitutional. *Id.* at 48 (*Cf. State v. Hicks*, 55 S.W.3d 515, 530 (Tenn. 2001) (finding the state's interest in conducting a license checkpoint to be indistinguishable "from a more general interest in ordinary crime control," since the state's "interest in enforcing a drivers' license law is [no] greater than its interest in enforcing any other law").

The checkpoint in this case not only did not have a proper purpose, but even if it did have a proper purpose it was executed in such a way as to allow officer's unbridled discretion on whom to detain. The officers in this case had the discretion at the checkpoint to allow a white motorist with a driver license issued by Canada to pass through, but arbitrarily detain a motorist who produced a valid driver's license issued by Mexico. (App.83-84).

The *Edmond* Court also stated that, in emergency situations, circumstances such as "thwart[ing] an imminent terrorist attack" or capturing a fleeing, dangerous criminal would justify a primary purpose related to ordinary crime control. *Id.* at 44. Since the primary purpose of checkpoints is so essential to a determination of constitutionality, *Edmond* cautioned that an inquiry into primary purpose must include examination of all available evidence. *Id.* at 49. Thus, a program with an impermissible purpose, such as the checkpoint in the case at hand, must be proscribed.

The State failed to show what the primary purpose in the case at hand was. Although called a License Checkpoint, the officers were instructed to look for any and all violations of the law including, but not limited to, violations by the passengers who were not operating a Motor Vehicle at all. This checkpoint was for general crime prevention.

In this case, Officer Mitchell did not know the primary purpose that her supervisor had in mind when setting up the checkpoint. (App.53). She further testified that even though it was set up at 2:00 a.m., to the best of her knowledge, this was not a DWI checkpoint set up pursuant to North Carolina General Statute § 20-16.3A (2003), nor was the primary purpose to apprehend impaired drivers who posed an "immediate, vehicle-bound threat to life and limb." *Edmond*, 531 U.S. at 43.

Instead, Mitchell testified that the officers were working a special "TAC" unit, which has the purpose of "just general crime control" in hot spots. (App.65). The checkpoint was set up around 2:00 am just down the street from several bars. Officer Mitchell was aware that North Carolina had passed an Impaired Driving Checkpoint Statute NCGS 20-16A (which parallels the requirements in Sitz) but she had been told that it was not necessary for the Police to comply with any of those requirements this since they called

the checkpoint a mere "License Check" rather than a "Driving While Impaired checkpoint." (App.82).

The State in the case at hand offered no evidence that the primary purpose of the checkpoint was to prevent drunk driving, detect illegal aliens, or any other compelling State interest. Rather, the State put forth that the purpose of this warrantless and suspicionless detention of the public was the State's desire to enforce the motor vehicle and other general criminal statutes. Further, the State offered no evidence that the checkpoint was conducted under guidelines that minimized the officers' discretion.

This Court must find unconstitutional the checkpoint in this case because the State proffered no evidence from the programmatic level of a legitimate primary purpose. This Court has held that cases involving warrantless searches and seizures "are per se unreasonable under the Fourth Amendment," subject "only to a few specifically established and well delineated exceptions," which are "jealously and carefully drawn," such that the "burden is on those seeking the exemption" to show "that the exigencies of the situation [make] that [exception] imperative." *Coolidge v. N. H.*, 403 U.S. 443, 454-455 (1971). General crime prevention is not a sufficient justification to expand the extremely limited exceptions to *Terry v. Ohio*'s requirement of reasonable suspicion which is itself already an exception to the Fourth Amendment's requirement of probable cause. 392 U.S. 1; *See also*, *Edmond*, 531 U.S. at 37-38.

The State's interest in discovering unlicensed drivers is an even less compelling interest than drug prevention, which the *Edmond* Court concluded was merely an interest in general crime prevention. Similarly, detecting unlicensed drivers also has the primary purpose of general crime prevention since it in no way equals the exigent circumstances of the "immediate, vehicle-bound threat to life

and limb" in *Sitz*. *Id.* at 39, 43. Based on the Court's reasoning in *Edmond*, regardless of the reasonableness of the officer's conduct at the checkpoint or its intrusion on motorists, this checkpoint violated the Fourth Amendment since the State offered no evidence from the programmatic level of a compelling and permissible primary purpose which justifies an exception to the Fourth Amendment protections.

Therefore, not only did the State fail to provide any evidence of a permissible primary purpose, but the State also did not proffer any evidence that the primary purpose of the checkpoint was other than a generalized criminal sweep of otherwise law abiding citizens going about their way down a public street. The officer testified that on the night of the checkpoint, her squad of officers was working "TAC," which is a special shift "each squad works once a year" for "general crime control." In addition, the officer testified that she had no knowledge of "a high rate of people driving without a driver's license that posed some great threat to the public." Thus, there is no evidence of a legitimate primary purpose for conducting this checkpoint.

The trial court erred by deciding not to suppress evidence obtained at this checkpoint because it violated the Fourth Amendment. The North Carolina Court of Appeals failed to recognize this error due to the prior cases decided by the North Carolina Supreme Court in direct contradiction to the standards set out by this court in Edmonds and it's predecessors. The North Carolina Supreme Court has split from other states in how it defines a General Crime Control purpose, and the North Carolina Court has adopted a standard that is violates the standards set forth by this Court.

This Court should grant Petitioner's petition for writ of certiorari to correct the North Carolina Supreme Court's misapplication of the standards for warrantless seizures, and

to give proper guidance to conflicting states on this undecided issue.

B. The State failed to provide evidence to prove that license checkpoints are legitimate and constitutional under the Fourth Amendment.

Even if this Court concludes that the checkpoint did not violate the Fourth Amendment for the above reasons, it should conclude that pretextual checkpoints ostensibly to verify drivers' license and registration cards violate the United States Constitution. Such checkpoints do not have a compelling State interest nor a legitimate primary purpose that equals that of sobriety or border patrol checkpoints, and this Court should look to several States that have struck down license checkpoints as an unreasonable exception to the Fourth Amendment. License and registration checkpoints constitute an unreasonable seizure of motorists that is not justified by the same nationally important purpose or "immediate, vehicle-bound threat to life and limb," that justifies sobriety checkpoints, an extremely limited exception to the *Terry* "reasonable suspicion" requirement, which is itself an exception to the Fourth Amendment. *Edmond*, 351 U.S. at 43. Most importantly, this Court has never explicitly held license checkpoints reasonable under the Fourth Amendment, and must clarify the speculation this Court has made in previous dicta.

1. The minimal contribution to highway safety created by license checkpoints is not a compelling enough state interest to justify expanding the narrow checkpoint exception to the Fourth Amendment.

This Court should find that license checkpoints not

only fail to equal the compelling state interests which influenced this Court to uphold sobriety and border patrol checkpoints, but also result in a minimal contribution to highway safety. In 1979, twenty-one years before it developed the primary purpose test in *Edmond*, this Court held in *Delaware v. Prouse* that an arbitrary vehicle stop to check for license and registration violated the Fourth Amendment because "the incremental contribution to highway safety" caused by such stops was insufficient justification for the stops. 440 U.S. 648, 659 (1979). In addition, the Court invalidated the license check because it involved a "standardless and unconstrained" exercise of discretion by the officer. *Id.* at 661. While the Court stated that "questioning of all oncoming traffic at roadblock-type stops is one *possible* alternative" (emphasis added) that involves less intrusion on the motorist and less discretion by the officer, the Court held that vehicle stops to check license and registration were "unreasonable under the Fourth Amendment" except when "there is at least articulable and reasonable suspicion" that the driver is unlicensed. *Id.* at 663.

Even though the officers stopped every vehicle at the checkpoint in this case, that action does not in itself make a license checkpoint constitutional. The stopping of every vehicle is merely *one* of several *measures* that must be imposed. The *Prouse* Court mentioned it as one possible way to remove some of the *discretion* from individual officers, not as *the way to make license checkpoints per se constitutional.* It is a checkpoint's compelling and legitimate primary purpose, not the stopping of all vehicles, to which this Court has given weight in past checkpoint cases. (*See e.g. Edmond*, 531 U.S. 32). Most notably, this Court invalidated a narcotics checkpoint in *Edmond* because the checkpoint's primary purpose was not as compelling as that found in *Sitz* or *United States v. Martinez-Fuerte* even though the officers conducted the checkpoint in *Edmond* according to strict guidelines with minimal officer discretion

and stopped *every vehicle*. This Court should follow its previous example and examine the State's primary purpose in operating checkpoints and the level of officer discretion, rather than basing a decision of constitutionality upon the stopping of all vehicles at the checkpoint. For instance, in this case Officer Mitchell was given discretion to randomly waived white Canadian nationals through, but detained Hispanic Mexican nationals with valid licenses issued by their respective nation, thereby impermissibly basing the further detention on issues of ethnic background and national origin. (App. 83-84).

The State proffered no evidence to demonstrate an important government interest in discovering unlicensed drivers, or evidence to show this interest is significantly greater than the State's general interest in enforcing the laws of North Carolina. The State has also provided no evidence that unlicensed drivers pose an "immediate, vehicle-bound threat to life and limb" similar to that created by drunk drivers. *Id.* at 43.

In fact, North Carolina Courts have held that there is no recognized relationship between an unlicensed driver and any increase of injury to other motorists. The North Carolina Supreme Court in *Beaman v. Duncan*, 228 N.C. 600, 46 S.E.2d 707 (1948) held that evidence of a revoked license could not be admitted into evidence to prove that the unlicensed driver was negligent. The *Beaman* Court reasoned that "[e]ven though the violation of a traffic statute may be negligence per se, such negligence is not actionable unless there is a causal relation between the violation of the statute and the injury." *Id.* at 603-604, 46 S.E.2d at 710. The court concluded that there was no causal relation between the defendant's failure to have a license and the injury he inflicted. *Id.*

The simple fact that a driver is unlicensed does not as a matter of law create an "immediate, vehicle-bound threat to life and limb." *Edmond*, 531 U.S. at 43. Driving without a license does not create risk of harm in the same manner as driving drunk. Thus, unlicensed drivers cannot warrant the Fourth Amendment intrusion created by the State's use of license checkpoints. *Id.*

2. Even if an unlicensed driver did pose a greater risk the State has provided no evidence to prove that a license checkpoint is an effective means of discovering unlicensed drivers.

This Court in *Delaware v. Prouse* noted that "[t]he foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations," 440 U.S. at 659. Thus, stopping vehicles due to traffic violations is the most effective means of enforcing safety regulations. Because there is a minimal number of unlicensed drivers, an officer will have to stop many innocent law abiding licensed drivers before discovering one who is unlicensed. *Id.* at 660. Therefore, many licensed drivers, possibly thousands, whom officers otherwise have no reasonable articulable reason for stopping will have their Fourth Amendment rights violated so that a few, if any, unlicensed drivers can be discovered.

3. This Court should apply the *Brown v. Texas* balancing test to license checkpoints to determine that such checkpoints are unreasonable under the Fourth Amendment.

Based on the balancing test created by this Court in *Brown v. Texas*, this Court should conclude that the scale weighs in favor of motorists' freedom from intrusion. The

balancing test requires this Court to weigh the "gravity of public concerns served by [the] seizure" and the "degree to which [the] seizure advances public interest" with the "severity of interference with personal liberty." *Brown*, 443 U.S. at 51.

First, unlicensed drivers do not pose the same immediate threat to public safety as do drunk drivers. In addition, detecting unlicensed drivers is not as weighty a public concern as detecting illegal immigrants. Rather, detecting unlicensed drivers has the same weight as detecting other general statutory violations, and this Court does not permit checkpoints to be used for this purpose. *See Edmond*, 531 U.S. 32. Driving without a license is a general crime, and detecting such drivers, like detecting narcotics, is not a *specific* non-criminal purpose, such as deterring and arresting drunk drivers, curbing illegal immigration, searching for a dangerous criminal, or thwarting an imminent terrorist attack. *Id.* at 44. The public concerns addressed by license checkpoints are not compelling, grave enough concerns to justify gross intrusion into the sanctity of the Fourth Amendment, and subjecting randomly the public to having to sit and allow an officer to inspect their vehicle for any minor traffic violation should the person be of a specific race or national origin.

Second, license checkpoints do little to advance public safety. Since officers stop all drivers who pass through such checkpoints, there will not be any evidence that a driver was driving recklessly or negligently or proof that the stop of an unlicensed driver promotes public safety.

Finally, license checkpoints that allow individual officer discretion severely interfere with the personal liberty of motorists. Even though the objective intrusion of checkpoints, measured by the duration of the seizure and the intensity of the investigation, is supposed to be slight

because the stop is supposed to be brief, the subjective intrusion is much higher. This Court should examine the high amount of individual officer discretion that license checkpoints allow, the lack of guidelines to address this discretion problem, and the fact that, once stopped, the officer has full discretion to make the person exit the vehicle, or question the individual at length before allowing a validly licensed person to pass. When this Court created this balancing test, it stated:

> the Fourth Amendment requires that a seizure must be based on *specific, objective facts* indicating that society's legitimate interests require the seizure of the particular individual, or that the seizure must be carried out *pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers*.

Brown, 443 U.S. at 51 (emphasis added). The Fourth Amendment permits seizures when performed because of probable cause or reasonable suspicion, but only permits checkpoint seizures when conducted "pursuant to a plan embodying explicit, neutral limitations" on individual officer discretion. *Id.* Thus far, North Carolina courts have unconstitutionally allowed license checkpoints that have no limits on officer discretion save for a policy to stop every vehicle. Since this Court in *Prouse* stated that stopping every vehicle was just one possible way to limit officer discretion, the stopping of every vehicle by itself is not enough to prove that officers operate a checkpoint without unconstrained discretion. *Prouse*, 440 U.S. at 663. Therefore, this Court should find that application of the balancing test to license checkpoints weighs against their operation.

Several other jurisdictions have more recently struck down the use of license checkpoints, and this Court should

reach the same conclusion because of the compelling justifications those jurisdictions have given for their decision. For instance, Tennessee found license checkpoints unconstitutional because they served no compelling state interest, there were no limitations on the intrusion on motorists, and an unlicensed driver did not "*necessarily* [pose] an immediate danger of death or serious bodily injury great enough to warrant the suspicionless stop of *all* drivers at a checkpoint." *State v. Levitt*, 73 S.W.3d 159, 171 (Tenn. Crim. App. 2001). Georgia has also found license checkpoints to be impermissible because their primary purpose is, in essence, general law enforcement. *See e.g. State v. Ayers*, 570 S.E.2d 603 (Ga. Ct. App. 2002) (finding unconstitutional a checkpoint at which officers checked for license, insurance, and a proper tag on vehicle). Additionally, Illinois has determined that license checkpoints constitute an unreasonable seizure under the Fourth Amendment since such checkpoints do not further a compelling state interest. *See People v. Fullwiley*, 710 N.E.2d 491 (Ill. App. Ct. 1999) (concluding that the license checkpoint was 1) not promulgated by a politically accountable official, 2) left to the officer's unbridled discretion, 3) not conducted according to written guidelines that limited officer discretion, and 4) did not advance the public interest). Thus, this Court should find that the rationale provided by other jurisdictions for invalidating license checkpoints also apply to all checkpoints conducted in violation of the Fourth Amendment. Currently an innocent motorist has different protections under the Fourth Amendment of the United States Constitution depending upon which street he may be attempting to travel.

License checkpoints (if in fact a license is truly what they are checking for) do not serve a compelling enough state interest to justify the creation of another exception to the Fourth Amendment. Motorists' freedom from government intrusion on their personal liberty far outweighs

the State's minimal interest served by license checkpoints and the minimal degree to which license checkpoints advance the State's interest.

4. Even if the checkpoint's primary purpose was legitimate, the officers exercised unstandardized and unconstrained discretion, making this improperly conducted checkpoint unreasonable under the Fourth Amendment.

Alternatively, if this Court determines, after a closer scrutiny, that license checkpoints are legitimate and serve a compelling primary purpose, then it should find that the Superior Court erred in denying Appellant's Motion to Suppress because the checkpoint officers in this case exercised non-standardized and unconstrained discretion, and the State provided no proof that the checkpoint was sufficiently limited in scope. This Court in *Prouse* disapproved of stops that involved "standardless and unconstrained discretion," and the Court required the discretion of officers to be circumscribed. 440 U.S. at 661. As the Court noted in *Martinez-Fuerte*, the "principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the *scope* of the stop." 428 U.S. at 566-567 (*See also Brignoni-Ponce*, 422 U.S. at 881 (stating that the stop and inquiry must be "reasonably related in scope to the justification for their initiation")).

This Court upheld the border patrol checkpoint in *Martinez-Fuerte*, finding the checkpoint procedures reasonable since they involved minimal "discretionary enforcement activity" and little intrusion on motorists. *Id.* at 559, 562. First, that case involved an established, *permanent* checkpoint, so the Court noted that the checkpoint's location did not take motorists by surprise. *Id.* Next, the Court found that the officers conducted the established checkpoint in a "regularized manner." *Id.* The Court also noted that a

supervising official chose the checkpoint's location, and "[m]any incidents of checkpoint operation also [were] committed to the discretion of such [supervising] officials." *Id.* In addition, officers could only stop vehicles *that passed through the checkpoint*, which left "less room for abusive or harassing stops of individuals than there was in the case of roving-patrol stops." (emphasis added) *Id.*

The checkpoint at issue in this case has little in common with the standardized and discretionless checkpoint in *Martinez-Fuerte*. First, although not a roving checkpoint, the checkpoint in this case did not have a fixed and permanent location, and the officers operated it late at night, like the prohibited roving checkpoints. Since this was not a permanent checkpoint, its operation and location *did* take motorists by surprise, especially since the officers did not post any signs to warn approaching motorists of its location and purpose. Unlike the officers in *Martinez-Fuerte* who limited abusive stops by only stopping vehicles that passed through the checkpoint, the officers in this case had a policy that "if somebody turned on a side street before entering [the checkpoint], part of the [checkpoint] was to pull them over" *if it looked like they may be attempting alluding* the checkpoint, but then if *the vehicle looked like it probably had business down a side street* then it was not detained.

Also, unlike the regularized manner in which the officers conducted the checkpoint in *Martinez-Fuerte*, the officers in this case had broad discretion over the checkpoint's operation. For example, officers used discretion to determine: 1) how long to initially detain a motorist before diverting him to the secondary checking station; 2) whether to divert a motorist because of alcohol odor, or determine that it was faint enough not to be a problem; 3) whether to divert and search a motorist because of marijuana odor; 4) whether to divert a motorist who presented a Mexican rather than a Canadian license, and 5)

whether to detain a motorist who turned down a side street before entering the checkpoint. In addition to this broad officer discretion in the operation of the checkpoint, the officers received *no* specific training on conducting license and registration checkpoints. Thus, even though a supervisor chose the checkpoint's location, the supervisor did not limit the discretion exercised by the officers. This Court must therefore find that this checkpoint violated the Fourth Amendment because a supervisor did not conduct the checkpoint according to reasonable procedures that restricted the officers' individual discretion.

According to this Court's reasoning in past checkpoint cases, the State must provide evidence to prove that the checkpoint's primary purpose was similar in gravity and importance to the approved sobriety and border patrol checkpoints. This Court should find that the primary purpose of this checkpoint was general crime prevention, and therefore violated the Fourth Amendment. Alternatively, if this Court determines that the primary purpose of the checkpoint was to detect impaired drivers, then this Court should find that this checkpoint violated the requirements for sobriety checkpoints provided by *Sitz*. Or, if the purpose of this checkpoint was primarily to detect unlicensed motorists, this Court should find that the checkpoint still violated the Fourth Amendment because of the unreasonable manner in which the officers conducted it. Under any of these reasons, this Court should determine that the Superior Court erred in denying Appellant's Motion to Dismiss and the Court of Appeals opinion was in error.

II. PETITIONER WAS PUT IN JEOPARDY WHEN HE CAME BEFORE A DISTRICT COURT JUDGE AND PLED GUILTY TO MISDEMEANOR DRIVING WHILE IMPAIRED, THE COURT ACCEPTED THE PLEA AND RENDERED A VERDICT, AND THEN THE STATE

VOLUNTARILY DISMISSED THE CASE PRIOR TO A SENTENCING HEARING AND FINAL JUDGMENT BEING ENTERED.

The decision of the North Carolina Court of Appeals decided an issue that is an important question of federal law that has not been, but should be, settled by this Court. Petitioner has been placed in double jeopardy by being twice tried for the same offense of driving while impaired.

It is a fundamental principle of law guaranteed by the Federal constitution that no person can be twice put in jeopardy of life or limb for the same offense. U.S. Const. Amend V. Jeopardy attached to this case when Petitioner pled guilty in District Court. The Double Jeopardy Clause of the Fifth Amendment is applicable to the States through the Fourteenth Amendment. *Benton v. Maryland,* 395 U.S. 784, 787 (1969). It is well settled law that a verdict is final, ending a defendant's jeopardy, even when it is "'not followed by any judgment and is a bar to a subsequent prosecution for the same offense.'" *Green v. United States* 355 U.S. 184, 189 (1957). Petitioner's verdict was final upon his plea of guilty. "Moreover, it is not even essential that a verdict of guilt or innocence be returned for a defendant to have once been placed in jeopardy so as to bar a second trial on the same charge." *Id.* In addition, a plea of guilty differs from a mere admission or extrajudicial confession and of itself constitutes a conviction. *Machibroda v. U. S.*, 82 U.S. 510 (1962). "Like a verdict of a jury, [a plea of guilty] is conclusive." *Id.*

The district court judge in this case began a hearing regarding sentencing, but the State dismissed the case after Appellant entered a plea of guilty, but prior to a full sentencing hearing. (App.22-32). Additionally, the clerk marked both a plea and a verdict of guilty on the citation and the docket. (App.34-39). Therefore, the official district

court records show both an entry of a guilty plea and an official entry of a verdict against Appellant, then a voluntary dismissal. Even if the superior court is allowed to set aside the official District Court Division records and the State is allowed to argue that there is no guilty verdict on the citation and the docket, Appellant was put in jeopardy and subject to sentencing once he entered a plea of guilty.

Jeopardy attached in this case once Petitioner entered his plea of guilty. The State properly arraigned Petitioner on the misdemeanor charge of Driving While Impaired in the General District Court Session of traffic court on September 12, 2000. Petitioner then entered an unconditional plea of guilty in open court. Because Petitioner's trial was a bench trial before a competent judge requiring no jury, jeopardy attached when he pled guilty. However, the Court of Appeals erroneously held that jeopardy did not attach and upheld the Superior Court's decision. The State very clearly prosecuted Petitioner for the same offense.

Moreover, the Superior Court erroneously admitted testimony from Judge Davis in finding that the record from the District Court was inaccurate. (App.27-31; 42-46). The State cannot collaterally attack district court records in superior court. The Court of Appeals should have concluded that the Superior Court could not find that the record from the District Court was inaccurate and could not consider parole evidence in determining the validity of the District Court's record. This Court has repeatedly presumed court records to be accurate. This Court in *Sheppard v. Wilson,* held, "where there is error in entering a judgment, the court, at a subsequent term, cannot set it aside, unless it was entered by misprision of the clerk, by fraud.'" 47 U.S. 260 (1848); *Lyon v. Perin & Gaff Manufg. Co.*,125 U.S. 698, 702 ("a decree . . . is a final determination.") It is not open to any other tribunal to call in question the verity of a court's records as made and parole evidence is not admissible to

contradict a court record. See *Ross v. M'Lung*, 31 U.S. 283, 289 (1832) ("This is an attempt by parol testimony to vary a record [and] in direct opposition to the settled rules of evidence.").

In the present case, the State was allowed to collaterally attack the validity of the District Court's records in Superior Court, and it was allowed to use parole evidence to do so. The district court's citation and recorded docket, which the North Carolina Supreme Court has deemed absolutely accurate, show both a plea of guilty and a verdict of guilty. Thus, since the record is deemed accurate and the State did not seek to amend or correct the record, the record entry of a guilty verdict stands, precluding the State from proceeding upon the habitual driving while impaired charges. The State cannot collaterally attack the district court record, and the superior court erred in allowing the State to collaterally attack the verdict of guilty that today stands as public record in the district court records of Forsyth County. Since the Court of Appeal's affirmation of such an attack is a break from Supreme Court precedent, the Court should grant Petitioner's writ of certiorari.

In the case at hand, Petitioner was arraigned, pled guilty in open court, and the court reporter recorded a verdict of guilty. The Court of Appeals should have held that jeopardy attached at this point and that the State could not charge Petitioner with the same offense for a second time. Because the Court of Appeals incorrectly ruled that jeopardy had not attached, because double jeopardy has significant public interest and is of major significance to the jurisprudence of this nation, the Court should also grant Petitioner's petition for writ of certiorari on this basis.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted:

JAMES WOOD
PRO SE
1309 STEVENS CREEK ROAD
FRIES, VA 24330
(276) 744-2977

No. _____

In The
Supreme Court of the United States

JAMES CAREY WOOD,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

On Petition for a Writ of Certiorari to the North Carolina Court of Appeals

---

APPENDIX

James Carey Wood
Pro Se Petitioner
1309 Stevens Creek Road
Fries, Virginia 24330
(276) 744-2977

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

NO. COA03-551

NORTH CAROLINA COURT OF APPEALS

Filed: 1 June 2004

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 00 CRS 055022

JAMES CAREY WOOD

Appeal by defendant from judgment dated 13 December 2002 by Judge William Z. Wood, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 5 February 2004.

Attorney General Roy Cooper, by Special Deputy Attorney General Isaac T. Avery, III and Assistant Attorney General Patricia A. Duffy, for the State.

The Dummit Law Firm, by E. Clarke Dummit, for defendant-appellant.

BRYANT, Judge.

James Carey Wood (defendant) appeals a judgment dated 13 December 2002 entered consistent with a jury verdict finding him guilty of habitual impaired driving.

The evidence at trial indicates that at about 1:00 a.m. on 26 August 2000, defendant drove his vehicle to a checkpoint on Healey Drive in Forsyth County, North Carolina. At the checkpoint, police officers stopped all oncoming vehicles and asked drivers to produce drivers' licenses and registrations. When defendant stopped his vehicle at the checkpoint and Officer S.D. Mitchell asked for his driver's license and registration, defendant stated his license was

suspended. Upon smelling a strong odor of alcohol from defendant and observing defendant's speech to be slurred, slow, and mumbled, Officer Mitchell requested defendant to pull over. Three sobriety tests were administered to defendant, all of which he failed. Defendant was arrested and charged with driving while impaired, driving while license revoked, and felonious habitual driving while impaired.

In an order filed 12 February 2002 denying defendant's motion to dismiss the charge of habitual driving while impaired, the trial court found:

2. . . . [O]n September 12, 2000 . . . defendant appeared in Forsyth County Criminal District Court . . . to answer the misdemeanor charges pending against him;

3. . . . [D]efendant . . . tendered a plea of guilty to misdemeanor Driving while Impaired. The State dismissed the misdemeanor Driving while License Revoked charge;

4. . . . [A]fter . . . defendant tendered his plea to the [c]ourt[, the State] realized that . . . the felony Habitual Driving while Impaired charge was still pending. Based upon this realization [the State] requested the matter be continued until the afternoon Session;

5. . . . [T]he Honorable Chester C. Davis, District Court Judge presiding at the hearing, allowed the continuance and directed that the parties return to [c]ourt at 2:15 p.m. for further proceedings;

6. . . . [W]hen the parties returned to [c]ourt that afternoon [the State] informed the [c]ourt that . . . defendant had a felony charge pending based upon the same offense and that the State was consequently taking a voluntary dismissal of the misdemeanor charge;

7. . . . [C]ounsel for . . . defendant objected to the dismissal on the grounds that . . . defendant had tendered his plea of guilty and that the [c]ourt had accepted . . . defendant's plea;

8. . . . [D]efendant's objection was overruled, but that Judge Davis instructed the Clerk to note on the judgment that the State dismissed the offense "after entry of plea";

9. . . . [P]rior to the State taking a voluntary dismissal of the misdemeanor Driving while Impaired offense no witness had been sworn, no testimony had been elicited, the State had not presented a factual basis for the plea and neither party had presented evidence to the [c]ourt;

10 . . . [U]pon hearing that . . . [d]efendant tendered a plea of guilty to the misdemeanor Driving while Impaired offense, the clerk erroneously noted a verdict of guilty on the Judgment and erroneously recorded a verdict of guilty in the courtroom minutes;

11. . . . [T]he courtroom clerk erroneously made these entries in anticipation of proceedings consistent with a guilty plea;

12. . . . [T]he clerk also noted that the case was voluntarily dismissed on the Judgment and noted the voluntary dismissal on the courtroom minutes;

13. . . . Judge Davis signed the Judgment prepared by the courtroom clerk without realizing the ambiguity reflected thereon.

The trial court then concluded:

1. . . . [T]he certified copies of the District Court Judgment and courtroom minutes relating to the [charge of] misdemeanor Driving while Impaired found in file number 00 CR 55014 are ambiguous in that they reflect both a verdict of guilty and a voluntary dismissal by the State;
2. . . . [I]t was necessary and proper for this [c]ourt to hear testimony from witnesses present at the District Court hearing of the misdemeanor offense in order that this [c]ourt attempt to explain the ambiguity reflected by the documents;
3. . . . [T]he State did not offer and this [c]ourt did not consider evidence and testimony at the hearing of . . . [d]efendant's Motion to Dismiss for the purpose of collaterally attacking any ruling or finding of the District Court, but rather for the purpose of explaining the ambiguity reflected by the documents;

4. . . . [T]he Honorable Chester C. Davis did not hear testimony or accept evidence at the September 12, 2000 hearing of . . . defendant's misdemeanor Driving while Impaired offense, did not adjudge . . . defendant guilty of that offense, and did not impose any sentence relating to that offense;

5. . . . [J]eopardy did not attach at the September 12, 2000 hearing of the misdemeanor charge of Driving while Impaired, and that prosecution of the present felonious Habitual Driving while Impaired offense is not barred by the double jeopardy clauses of the North Carolina or United States Constitutions.

The trial court also denied defendant's motion to suppress evidence obtained from the stop of defendant and his vehicle at the checkpoint. On 10 December 2002, defendant was found guilty of habitual impaired driving.

The issues are whether the trial court erred in denying defendant's: (I) motion to dismiss; and (II) motion to suppress.

I

Defendant first argues the trial court's denial of his motion to dismiss the charge of habitual driving while impaired violates the prohibition against double jeopardy. We disagree.

Double jeopardy prohibits a second prosecution for the same offense after conviction[] . . . . Additionally, the Supreme Court of the United States has noted that "[a] plea gain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest."

State v. Wallace, 345 N.C. 462, 467, 480 S.E.2d 673, 676

(1997) (citations omitted). When a plea of guilty tendered by the defendant is not accepted, the prohibition of double jeopardy does not apply. *Id.* Here, the trial court, in denying the pre-trial motion to dismiss, made numerous findings of fact and concluded jeopardy did not attach.

Defendant has failed to assign error to any of the findings of fact, therefore, these findings are presumed correct and are binding on appeal. *State v. Eliason*, 100 N.C. App. 313, 315, 395 S.E.2d 702, 703 (1990). In turn, our review is limited to whether these findings support the trial court's conclusions of law. *Id.*

The trial court conducted a hearing and received testimony from Judge Davis and the courtroom clerk. The trial court's findings, based on testimony and other evidence, indicate that after defendant tendered a guilty plea to the charge of driving while impaired, the "clerk erroneously noted a verdict of guilty on the Judgment and erroneously recorded a verdict of guilty in the courtroom minutes . . . in anticipation of proceedings consistent with a guilty plea." The findings further indicate the following: The State then requested a continuance, which Judge Davis granted. At the end of the continuance, the State voluntarily dismissed the charge. "[P]rior to the State taking a voluntary dismissal of the[charge] no witness had been sworn, no testimony had been elicited, the State had not presented a factual basis for the plea and neither party had presented evidence to [Judge Davis]." "Judge Davis signed the Judgment prepared by the . . . clerk without realizing the ambiguity thereon." These findings are supported by the testimony of Judge Davis that the State would not have been allowed to dismiss a charge after he had accepted a guilty plea. Therefore, the fact that the State was allowed to dismiss the DWI charge indicates Judge Davis had not accepted the guilty plea tendered by defendant.

In sum, the trial court's findings support the conclusion that the plea of guilty tendered by the defendant was not accepted by the district court on 12 September 2000. We hold, therefore, that the principle of double jeopardy does not apply here. This assignment of error is overruled.

II

Defendant next contends the trial court erred in denying his motion to suppress evidence obtained as result of the checkpoint stop. Particularly, defendant argues the checkpoint and detention of every vehicle without reasonable suspicion violated N.C. Gen. Stat. § 20-16.3A and the Fourth Amendment of the United States Constitution.

N.C. Gen. Stat. § 20-16.3A provides:

> This section does not limit the authority of a law-enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States.

N.C.G.S. § 20-16.3A (2003) (emphasis added).

The United States Supreme Court has held that random stops of vehicles to check for drivers' licenses and registrations violates the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648, 663, 59 L. Ed. 2d 660, 673 (1979). However, the *Prouse* Court noted that the government is not precluded "from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative." *Id.* at 663, 59 L. Ed. 2d at 673-74.

In light of *Prouse*, our Courts have consistently held checkpoints for drivers' licenses and registrations where all vehicles were stopped are constitutional under the Fourth Amendment. *See State v. Mitchell*, 358 N.C. 63, 68, 592 S.E.2d 543, 546 (2004) ("Because police officers are not constitutionally mandated to conduct driver's license checkpoints pursuant to written guidelines; because Officer Falls received sufficient supervisory authority to conduct the checkpoint; and because the officers stopped all oncoming traffic at the checkpoint, we conclude that the checkpoint was constitutional."); *State v. Vancamp*, 150 N.C. App. 347, 351, 562 S.E.2d 921, 925 (2002) (checkpoint for drivers' licenses and registrations where all vehicles were stopped was constitutional); *State v. Tarlton*, 146 N.C. App. 417, 421-23, 553 S.E.2d 50, 53-54 (2001); *State v.Grooms*, 126 N.C. App. 88, 90, 483 S.E.2d 445, 446 (1997) (checkpoint for drivers' licenses, stolen vehicles, and individuals with outstanding arrest warrants where all vehicles were stopped was constitutional); *State v. Sanders*, 112 N.C. App. 477, 480, 435 S.E.2d 842, 844 (1993) (checkpoint for drivers' licenses where all vehicles were stopped was constitutional).

At the hearing on defendant's motion to suppress, Officer Mitchell testified that, as authorized by her supervisor, all vehicles were stopped at the checkpoint for drivers' licenses and registrations according to the police department's written guidelines. Officer Mitchell explained that the checkpoint was established at a location with a "heavy flow of traffic" to check for drivers' licenses and vehicle registrations. Defendant has conceded all vehicles were stopped at the checkpoint.

Based on the foregoing, we conclude the checkpoint, established to check for drivers' licenses and registrations of all vehicles, was constitutional. As such, the trial court did not err in denying defendant's motion to suppress.

No error.
Judges HUNTER and ELMORE concur.

Report per Rule 30(e).

NO. COA03-551

NORTH CAROLINA COURT OF APPEALS

****

(State v James Carey Wood)

STATE OF NORTH CAROLINA
V
JAMES CAREY WOOD

Forsyth
(00CRS55022)

****

JUDGMENT

This cause came on to be argued upon the transcript of the record from the Superior Court, Forsyth County. Upon consideration whereof, this Court is of the opinion that there is no error in the record and proceedings of said trial tribunal.

It is herefore considered and adjudged by the Court here that the opinion of the court, as delivered by the Honorable Wanda G. Bryant, Judge, be certified to the said trial tribunal to the intent that the proceedings be had therein in said cause according to law as declared in said opinion.

And it is considered and adjudged further, that the Defendant do pay the costs of the appeal in this Court incurred, to wit, the sum of Seventy-five and no/100 dollars ($75.00), and execution issue therefor.

Certified to the Superior Court, Forsyth County, this the 21st day of June 2004.

s/John H. Connell
Clerk, North Carolina Court of Appeals

No. 295P04
TWENTY-FIRST DISTRICT

SUPREME COURT OF NORTH CAROLINA

(State v James Carey Wood)

STATE OF NORTH CAROLINA
V
JAMES CAREY WOOD

From NC Court of Appeals
(COA03-551)
From Forsyth
(00CRS055022)

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendant on the 17th day of June 2004 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Attorney General, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 12th day of August 2004.

s/Brady, J.
For the Court"

Upon consideration of the petition filed on the 17th day of June 2004 by Defendant in this matter for discretionary review of the decision of the North Carolina

Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 12th day of August 2004.

s/Brady, J.
For the Court"

WIITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of August 2004.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina

s/Shaula A. Brannan

Seal of The Supreme Court of North Carolina

Shaula A. Brannan
Assistant Clerk

Copy to:
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Mr. E. Clarke Dummit, Attorney at Law, For James Carey Wood (by E-Mail)
Ms. Patricia Duffy, Assistant Attorney General, For State
Mr. Thomas J. Keith, District Attorney
Mr. Terry Holbrook, Clerk of Superior Court
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NORTH CAROLINA) IN THE GENERAL COURT OF
) JUSTICE
) SUPERIOR COURT DIVISION
COUNTY OF FORSYTH) 00 CRS 55022

STATE OF NORTH CAROLINA,)
)
) O-R-D-E-R
JAMES CAREY WOOD,)
Defendant.)

THIS MATTER COMING ON TO BE HEARD and being heard by the Honorable Henry E. Frye, Jr., Superior Court Judge presiding at the December 10, 2001 Session of the Forsyth County Criminal Superior Court upon the defendant's Motion to Dismiss, and the defendant being present in Court and represented by attorney E. Clarke Dummit of Winston-Salem, N.C., and the State of North Carolina being represented by Assistant District Attorney David L. Hall; the Court, after considering the briefs presented by counsel, conducting independent legal research, hearing testimony from witnesses and hearing arguments from counsel, makes the following:

FINDINGS OF FACT:

1. That on August 26, 2000 at approximately 1:00 a.m. the defendant was arrested in Winston-Salem, N.C. and charged with the offenses of Driving while Impaired, Driving while License Revoked and felonious Habitual Driving While Impaired;

2. That on September 12, 2000 the defendant appeared in Forsyth County Criminal District Court personally and through counsel, E. Clarke Dummit of Winston-Salem, N.C., to answer the misdemeanor charges pending against him;

3. That the District Court hearing the defendant was arraigned on the two misdemeanor charges. The defendant, through counsel, tendered a plea of guilty to misdemeanor Driving while Impaired. The State dismissed the misdemeanor Driving while License Revoked charge;

4. That after the defendant tendered his plea to the Court, Assistant District Attorney Lori Steinhagen Lindsley realized that the defendant had achieved habitual status and that the felony Habitual Driving while Impaired charge was still pending. Based upon this realization A.D.A. Steinhagen-Lindsley requested the matter be continued until the afternoon session;

5. That the Honorable Chester C. Davis, District Court Judge presiding at the hearing, allowed the continuance and directed that the parties return to Court at 2:15 p.m. for further proceedings;

6. That when the parties returned to Court that afternoon A.D.A. Steinhagen-Lindsley informed the Court that the defendant had a felony charge pending based upon the same offense and that the State was consequently taking a voluntary dismissal of the misdemeanor charge;

7. That counsel for the defendant objected to the dismissal on the grounds that the defendant had tendered his plea of guilty and that the Court had accepted the defendant's plea;

8. That the defendant's objection was overruled, but that Judge Davis instructed the Clerk to note on the judgment that the State dismissed the offense "after entry of plea";

9. That prior to the State taking a voluntary dismissal of the misdemeanor Driving while Impaired offense no witness had been sworn, no testimony had been elicited, the State had not presented a factual basis for the plea and neither party had presented evidence to the Court;

10. That upon hearing that the Defendant tendered a plea of guilty to the misdemeanor Driving while Impaired offense, the clerk erroneously noted a verdict of guilty on the Judgment and erroneously recorded a verdict of guilty in the courtroom minutes;

11. That the courtroom clerk erroneously made these entries in anticipation of proceedings consistent with a guilty plea;

12. That the clerk also noted that the case was voluntarily dismissed on the Judgment and noted the voluntary dismissal on the courtroom minutes;

13. That Judge Davis signed the Judgment prepared by the courtroom clerk without realizing the ambiguity reflected thereon;

14. That the Grand Jury returned a True Bill of Indictment for felonious Driving while Impaired in this matter on January 21, 2001.

Based upon the foregoing findings of fact, the Court hereby makes the following

CONCLUSIONS OF LAW:

1. That the certified copies of the District Court Judgment and courtroom minutes relating to the

misdemeanor Driving While Impaired found in file number 00 CR 55014 are ambiguous in that they reflect both a verdict of guilty and a voluntary dismissal by the State;

2. That is was necessary and proper for this Court to hear testimony from witnesses present at the District Court hearing of the misdemeanor offense in order that this Court attempt to explain the ambiguity reflected by the documents;

3. That the State did not offer and the Court did not consider evidence and testimony at the hearing of the Defendant's Motion to Dismiss for the purpose of collaterally attacking any ruling or finding of the District Court, but rather for the purpose of explaining the ambiguity reflected by the documents;

4. That the Honorable Chester C. Davis did not hear testimony or accept evidence at the September 12, 2000 hearing of the defendant's misdemeanor Driving while Impaired offense, did not adjudge the defendant guilty of that offense, and did not impose any sentence relating to that offense;

5. That jeopardy did not attach at the September 12, 2000 hearing of the misdemeanor charge of Driving while Impaired, and that prosecution of the present felonious Habitual Driving while Impaired offense is not barred by the double jeopardy clauses of the North Carolina or United States Constitutions;

6. That the Indictment returned by the Grand Jury in this matter is proper; and that there are no procedural bars to the prosecution of this matter in the Superior Court.

For the foregoing reasons, the defendant's Motion to Dismiss is hereby DENIED.

This the 11 day of January, 2002; nunc pro tunc December 13, 2001.

s/Henry E. Frye, Jr.
Honorable Henry E. Frye, Jr.
Superior Court Judge Presiding

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
FORSYTH COUNTY	SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA	)	
VS.	)	00 CrS 55022
JAMES CAREY WOOD	)	
DEFENDANT	)	

TRANSCRIPT OF MOTION HEARING

Winston-Salem, NC — 10 December 2001
Term

Appearances:

The Honorable Henry Frye, Jr.
Superior Court Judge Presiding

David Hall, Esquire
Assistant District Attorney
For the State of North Carolina

Clark Dummit, Esquire
Dummit Law Firm
For the Defendant

Reported by Deborah Cashion

December 12, 2001

(Defendant present with Counsel.)

THE COURT: Yes, sir.

MR. HALL : Good afternoon, your honor.

THE COURT: Good afternoon.

MR. HALL: We're before you on a motion to dismiss filed by the defendant in the matter of State versus James Carey Wood, W-o-o-d, with file No. 00 crS 55022. The Defendant has been indicted for the offense of felonious habitual driving while impaired. Mr. Dummitt has filed a motion with the Court to dismiss predicated upon the theory of double jeopardy as prescribed by the US – North Carolina Constitution. I would encourage Your Honor to review the briefs of the State as we as Mr. Dummitt prior to hearing any evidence or arguments in the case, as I believe that these two briefs may narrow the issues for your consideration and may give you some context within which to place some of the testimony.

THE COURT: That's fine. Yes, sir.

MR. DUMMITT: If I may approach, your honor.

(Document handed to the Court by both counsel.)

THE COURT: All right.

MR. HALL: Your Honor, the Defendant has the burden of proof with respect to this motion, I will defer

to the Defendant's presentation of any evidence, if necessary, and I'm unsure whether the state will put on any evidence or not.

THE COURT: All right, yes, sir.

MR. DUMMITT: Your Honor, do you have a copy of the court records?

THE COURT: No, I don't know. Is the file up here?

MR. DUMMITT: If I may approach, Your Honor. I'm handing you that is the District Court citation and the District Court docket from that day.

MR. HALL: For purposes of the record have those been marked as anything?

MR. DUMMITT: I have not marked those.

MR. HALL: You may want to do that.

MR. DUMMITT: The second on is a three-page document.

THE COURT: I thought it was a blank page. I'll just mark on the back of this Defendant's 1. And defendant's No. 2. Each page is a separate exhibit, Defendant's Exhibit No. 3, I know they may be consistent but I'll put Defendant's No. 4, so Defendant's 1 through 4 admitted, certified true copies. All right.

MR. DUMMITT: Your Honor. Those are copied of the Court record from District Court. We would be

making out motion based upon official court records, and we're ready to be heard on oral argument at any point, but I think the official court records speak for themselves.

THE COURT: All right.

MR. HALL: Your Honor, the State would like to place evidence before Your Honor, on that event.

MR. DUMMITT: Your Honor, if I could be heard with regard to that. I don't know if the evidence they are getting ready to put on is to put on some oral evidence to show this Court that the official court records aren't what the Courts records are. I don't think that it's proper to put oral evidence in one court to collaterally attack an official court record in another court.

THE COURT: Well, I have to make a consideration whether it's relative or not, but - - I will note your objection, but I' going to let him put on evidence.

MR. HALL: The state would call Mrs. Lorie Steinhagen-Lindsley.

LORI STEINHAGEN-LINDSLEY, being first duly sworn, testified on her oath as follows during DIRECT EXAMINATION:

BY MR. HALL:

A. Mrs. Lindsley, for the record if you could tell us your name and your occupation and place of employment.

A. My name is Lorie Steinhagen-Lindsley, I'm assistant DA with Forsyth County DA's Office.

Q. And within the courthouse are you known by any name other than Lorie Steinhagen-Lindsley?

A. I go by Lorie Steinhagen in Court.

Q. Do you recall the hearing of the matter now before this Court in District Court, the matter of State versus James Woods, which came before the District Court in September of 1990?

A. Yes, I am familiar with that.

Q. And were you working that day?

A. Yes.

Q. What were your duties?

A. I was working in traffic court.

Q. And did the Defendant's case come before you on the docket of that day's business?

A. Yes it did.

Q. And what, if any, action was taken with respect to this Defendant's case?

A. When his case was called his attorney indicated that he would be pleading guilty. I arraigned him. I had checked his record, he

had two convictions for DWI in North Carolina, I arraigned him and he entered a guilty plea.

Q. And was he represented by counsel at that time?

A. He was.

Q. Who was counsel?

A. Mr. Dummitt.

Q. Is his counsel sitting to my right, to your left?

A. Yes.

Q. And was counsel present when the Defendant entered his plea in District Court?

A. He was.

Q. And what, if any, action was taken by the Court on that plea?

A. After he pled guilty I asked that the case be held open.

Q. Prior - - and what time of the day or evening was it that you asked that the case be held open?

A. This was during the morning session.

Q. and the morning session ends when?

A. 12:30.

Q. Do you recall who the presiding - - what judge was in District Court on the day in question?

A. Judge Chester Davis was presiding.

Q. For the record, he is present in the courtroom, is he not?

A. Yes.

Q. Did Judge Davis hear any evidence or testimony of any kind from the State prior to the morning recess at 12:30?

A. No, he did not.

Q. Did Judge Davis sentence the Defendant at any time prior to the morning recess at 12:30?

A. No.

Q. Did Judge Davis take any action with respect to this Defendant prior to the morning break at 12:30?

A. No.

Q. And did you return to court that afternoon?

A. Yes.

Q. And what, if anything, happened with respect to this Defendant's case in the afternoon?

A. I dismissed his case.

Q. Can you explain to the Court the actual mechanics of what each party did when appearing back before the Court that afternoon?

A. When we came back before the Court that afternoon, I explained that there was a felony,

habitual DWI, pending, and I asked to take a voluntary dismissal and the plea be stricken.

Q. Prior to your taking the voluntary dismissal, had you presented any evidence to the Court?

A. No, I had not.

Q. Had any witnesses been sworn?

A. No.

Q. Had any factual basis, summary of any kind been presented to the Court with respect to these charges?

A. No.

Q. The habitual DWI which you've referenced, is it based upon this offense, and by "this offense" I mean the offense that was before you in District Court, or some other offense?

A. The habitual charge pending was based upon the same actions.

Q. At any time during the handling or hearing of this matter did you present any evidence whatsoever?

A. No.

MR. HALL: Nothing further.

THE COURT: Mr. Dummitt

MR. DUMMITT: No questions, your Honor.

THE COURT: Thank you.

(Witness steps down.)

MR. HALL: I call the Honorable Chester C. Davis.

CHESTER DAVIS, being first duly sworn, testified on his oath as follows during DIRECT EXAMINATION:

BY MR. HALL:

MR. DUMMITT: Your Honor, note my ongoing objection.

THE COURT: Yes, sir, I note it.

Q. Good afternoon, Your Honor.

A. Hello, sir.

Q. Your Honor, do you recall presiding in the criminal District Court for Forsyth County during the September 12th, 2000 session of the criminal District Court?

A. I have a very vague recollection of this occurrence, if that's what you're asking.

Q. Are there any documents that exist which you could review that would refresh your recollection as to whether or not you were holding court on that date?

A. There are, and I did review the District Court record – the Superior Court record in this matter prior to coming here today.

Q. And based upon those things do you believe that you were, in fact, holding court in criminal District Court in Forsyth District Court on September the 12th for what we regularly know as traffic court?

A. Yes, I do, and I was presiding.

Q. Based upon – well, first of all, do you recall the case of this Defendant, James Wood coming before you on that date?

A. All right, now I have to – do you mean, do I individually, or after reviewing the records?

Q. Well, first of all I'll ask you if you have any independent recollection of this man's face, or Mr. Dummitt and Mrs. Steinhagen coming before you on the case of James Wood, as we've discussed?

A. I vaguely recall this matter, and I remember that the DA was Lorie Steinhagen; that Mr. Dummitt was the defense attorney. I could not identify whoever the Defendant was by name or otherwise from my memory.

Q. Have you had an opportunity to look at the Court records previously identified, marked and

entered as Defense exhibits, I believe, they are 1 through 4? May I approach, Your Honor?

THE COURT: Yes. I'll give them to him.

A. Yes, I have a copy of these.

Q. Okay. And Your Honor, Judge Davis, if you would, can you explain how a DWI or any other criminal plea is taken by you in District Court?

A. The District Attorney calls the case, asks the Defendant and/or his attorney how they plead; in this case there was an attorney, the attorney said they pled guilty. I would point out one thing, there was also a charge of driving while license revoked, which was dismissed at the time the plea was taken, which was before lunch.

Q. Prior to your entering judgment in any criminal case, do you take a factual basis from the State for the parties?

A. To be perfectly honest, in District Court it all rather merges; and to draw a clear distinction one way or the other, we would normally hear from the officer, but it may involved more than just the actual facts, it might be in the record itself, and then – I mean, the record in terms of driving record, and after that I would say at some point, based on the plea of

guilty, there's a verdict of guilty and go on from there.

Q. Would you ever note an entry to a plea of guilty and would you ever note a verdict of guilty without hearing any facts of the underlying case?

A. Yes. Now, you didn't ask about DUI, just period.

Q. That was going to be my next question. Specifically with respect to a driving while impaired offense, if a Defendant appeared before you either pro se or through counsel and entered a plea of guilty without first hearing about the facts of the case, the nature of the stops and the nature of the offense?

MR. DUMMITT: Objection, Your Honor.

THE COURT: Overruled.

A. It's possible, there are times where the officer isn't there; it may be that there are times where the District Attorney chooses not to offer any evidence, and if there were a plea of guilty by the Defendant I would proceed with it.

Q. Okay, if an officer was present in the courtroom, based upon your experience in District Court, would you ever find a Defendant – accept his guilty plea and find a Defendant guilty, that is

entered a verdict of guilty, without hearing from that officer in a driving while impaired case?

A. Probably not.

Q. In this case, after reviewing the documents which have been marked, tendered and accepted as Defendant's 1 through 4, do you have – or do you know, or do you have a recollection, Judge Davis, whether you found this Defendant guilty of driving while impaired?

A. The records indicate that there was a voluntary dismissal after an entry of plea. I don't recall in my entire time as being a Judge having put that on any other citation. That, to me, in reviewing the record and having put it there, was very significant because it was, and is, my opinion that there is a point in the trial where jeopardy attaches, and the fact that I put – the matter was dismissed after entry of, or after any testimony or evidence or after a verdict. And so to me that was meaningful that that was put on this particular citation.

To answer your question specifically, I have – in reviewing this, I see that there is both a plea and verdict of guilty. I have noted that the record for the day indicates that same thing. Frankly, I think that's an error, but it's there.

Q. And as I understand it, it is your recollection that the State took a dismissal prior to your finding this Defendant guilty and ordering that he be adjudged guilty?

A. It is my opinion that that did occur because it's my understanding that after I have entered a verdict of guilty the State could not dismiss the charges.

Q. Did you sentence this Defendant?

A. I did not.

Q. Did you undertake any sentencing process?

A. No.

Q. Did you inquire about his prior record level?

A. No.

Q. Did you ask if there were any aggravating factors for purposes of sentencing under the DWI law?

A. I didn't ask anything about the case.

Q. I have no further questions.

THE COURT: Mr. Dummitt?

CROSS-EXAMINATION OF CHESTER DAVIS:

BY MR. DUMMITT:

Q. It's your indication that the official court records indicate that a verdict was entered?

A. Yes, they show that.

MR. DUMMITT: No further questions.

THE COURT: Okay, thank you, sir.

(Witness steps down.)

MR. HALL: We call Mr. Rick Jones, Deputy Clerk of Court.

MR. DUMMITT: If I could note an ongoing objection.

THE COURT: Yes, sir.

RICK JONES, being first duly sworn, testified on this oath as follows during DIRECT EXAMINATION:

BY MR. HALL:

Q. Good afternoon, Mr. Jones?

A. Good afternoon.

Q. If you could, state your name, please, and describe your occupation for the record.

A. Rick Jones, Deputy Clark, Superior (sic) Court, Courtroom division.

Q. Mr. Jones, let me first ask you, independent of any paper writing and any documents in the courtroom, do you have an independent recollection of appearing in Forsyth County criminal District Court on September the 12th of the year 2000 before the Honorable Chester C. Davis, with prosecutor

Lorie Steinhagen, or Lorie Steinhagen-Lindsley, and Mr. Dummitt?

A. Not without reviewing the records, no, sir.

Q. Have you had an opportunity to review the documents that the Defendant has already marked, introduced and been accepted as Defendant's 1 through 4?

A. Yes, sir.

Q. And based upon your review of those records do you recall being in Court on that date?

A. Yes, sir.

Q. Do you recall the matter that we've discussed in Court today, that is, the misdemeanor driving while impaired case of this Defendant, James Wood?

A. Yes, sir.

Q. Mr. Jones, if you could, with respect to your duties and responsibilities in District Court, can you describe how you handle a driving while impaired plea, particularly in terms of the paperwork?

A. Yes, sir. They call the case, they ask them how do they plead, guilty or not guilty, and I mark, as routine when they say "guilty" I automatically mark a guilty verdict, because of the number and the speed we go, we have to kind of keep up with the game here.

Q. After reviewing the records, again introduced by Defendant, marked an accepted as 1 through 4, do you have a recollection as to whether, in fact, testimony was taken by the Court and a sentence was rendered in that case?

A. No independent recollection.

Q. Based upon the records, do you --- can you tell us whether the judgment was entered and whether a sentence was taken in that case?

A. According to the notation on the file, a dismissal was taken after the entry of plea. If evidence was heard that would have been written in there also.

Q. And there is no notation about any evidence being taken, is that correct?

A. Correct, Judge Keiger taught me that several years ago.

Q. Is there any sentence for this Defendant?

A. No, sir.

Q. Is it your understanding after reviewing the records in this matter, again introduced by the Defendant 1 through 4, that the entry on the Court record of a plea of guilty, verdict of guilty was a product of your filling out the form upon hearing the

plea and not hearing this Judge finding the Defendant guilty?

A. Correct.

MR. HALL: Nothing further.

THE COURT: Mr. Dummitt?

CROSS EXAMINATION OF RICK JONES:

BY MR. DUMMITT

Q. When was the first time that this error was brought to your attention?

A. Yesterday afternoon?

Q. Excuse me?

A. Yesterday afternoon.

Q. And to your knowledge there's been no motion made in District Court to correct any of the records in District Court?

A. No, sir, not to my knowledge, no.

Q. And it's your understanding now, strike that. You're a sworn clerk that keeps the records of District Court?

A. Yes, sir.

Q. And it's your understanding that the current status of the District Court records are that there was a verdict of guilty?

A. Yes, sir.

Q. And that's both indicated on the citation and on the Court minutes that are recorded?

A. That's what they show, yes, sir.

Q. And you've not testified in any District Court hearing to set aside any court records?

A. No, sir.

MR. DUMMITT: No further question.

REDIRECT EXAMINATION OF RICK JONES:

BY MR. HALL:

Q. The record also indicates that the matter was dismissed, is that correct?

A. Yes, sir.

THE COURT: Let me ask you.

WITNESS: Yes, sir.

THE COURT: In District Court you wouldn't know the normal number of cases on the average that would come through within the last year or each month, would you?

WITNESS: Each month, not average, no, sir. I would have to check.

THE COURT: Is the normal procedure if you heard the Judge say a plea of guilty to enter a verdict of guilty and then you would wait and find out how the Judge sentences and then you put that information down?

WITNESS: Correct, yes, sir.

THE COURT: So even if – does he go at a fast pace? Slow pace? Medium pace?

WITNESS: Judge Davis, he goes pretty fast sometimes. We have some judges that are faster than others, he's probably right in the middle.

THE COURT: So if the scenario was – no matter what the case was, if the Defendant enters a plea of guilty, you mark verdict, and then you wait to see what the judge does and then you fill in.

WITNESS: Yes, sir, if he changes it, I will fill it in, that's correct.

THE COURT: So is this your handwriting on the copy that says, we've got guilty – got GG beside plea and verdict, and you've got VD in parenthesis after entry of the plea?

WITNESS: Yes, sir.

THE COURT: Would have you written that based on what Judge Davis told you or would he – or did he write it in there? In other words, on the paper where it says, VD after entry of plea, Judge Davis wouldn't write that, you would write that, is that correct?

WITNESS: I would write that.

THE COURT: Whatever he said, that's what you would write down?

WITNESS: Yes sir, that's correct.

THE COURT: Okay. All right, any questions based on what I asked?

MR. DUMMITT: Yes, please, Your Honor.

CROSS EXAMINATION OF RICK JONES CONTINUED:

BY MR. DUMMITT

Q. And it's my understanding that the judge is making reference to Defendant's Exhibit No. 1, have you reviewed a copy of that? If I may approach?

THE COURT: Just so we have the right one, 1 is –

MR. DUMMITT: Is the citation itself, is that correct?

A. Is what correct?

Q. That's the document you were just making reference to?

A. Yes, sir.

Q. And that document, you filled out on September 12, is that correct?

A. Yes, sir.

Q. Did you make any changes to that document after Judge Davis signed it?

A. I don't know. I can't say that, because we hand the citation up, he signs it and hands it back to us, and then he could have told us after that, that, you

know, write voluntary dismissal after entry of plea. I'm not sure of the sequence, if that's what you're asking.

Q. Okay, you're not certain of what sequence you wrote these items on here?

A. Correct.

Q. You don't know whether you wrote them on before or after the Judge's signature?

A. Correct.

Q. And you're making reference to the extra notation, VD after entry of plea?

A. Yes, sir, just like Judge Keiger always told me to do.

Q. Okay. And with regard to the check marks, you would have already made those checks marks before you handed it up?

A. At the time that he was arraigned I would have, yes.

Q. Okay. So you would not have handed up a blank judgment with nothing written on it for the Judge?

A. No.

Q. I'm sorry.

A. No, sir.

Q. So at the time Judge Davis signed this there was a verdict of guilty entered, and a voluntary dismissal of the driving while license revoked, is that correct?

A. The verdict is marked guilty, yes.

Q. And it's your testimony that you would not have changed the check marks after the Judge signed it?

A. That's correct.

MR. DUMMITT: No further questions.

MR. HALL: May I approach?

THE COURT: Yes.

REDIRECT EXAMINATION OF RICK JONES:

BY MR. HALL:

Q. Make sure your previous testimony was clear, Mr. Jones, showing you what has been introduced as Defendant's No. 1, these notations, on the reverse, or on the side of the citation reflecting the judgment in District Court --

A. Yes.

Q. -- as I understood you, and please correct me if I mischaracterize your testimony, the two marks recorded on this paper document, where there's a box that says "plea, guilty" and a box beside of the word "verdict," and then it's marked "guilty," as I

understand it, it would be your routine upon hearing a plea of guilty to go ahead and mark those?

A. Yes, sir.

Q. Okay. And do you believe that's what happened in this case?

A. Yes, sir.

Q. And the Judge at some point instructed you to note on here that a voluntary dismissal was taken, is that correct?

A. That's correct

MR. HALL: Nothing further.

MR. DUMMITT: Nothing further.

THE COURT: You may step down.

(Witness steps down.)

MR. HALL: That's all the evidence I have.

THE COURT: I need to ask Judge Davis just one thing. Judge Davis, when you – do you normally, when you have heard the evidence and you make your judgment, is that when you enter – say, Defendant having entered a plea of guilty, the Court finds him guilty, and then do it, or do you normally say it as soon as they enter the plea, and then wait for evidence? Do you know?

JUDGE DAVIS: No, I would – I do it at the end. I would do it at one time. It was an entry of

plea, and I round him guilty and found what level it is and go from there.

THE COURT: Okay. Thank you.

MR. DUMMITT: I do have some additional questions based on that, if I may, Your Honor.

MR. DUMMITT: Judge Davis, is there two different stages to a driving while impaired trial, including the findings of fact stage and the sentencing stage?

JUDGE DAVIS: Yes.

MR. DUMMITT: And do you at times enter a plea of guilty, verdict of guilty, and then begin a sentencing hearing at that stage?

JUDGE DAVIS: Yes, I would think so.

MR. DUMMITT: And so it's possible – strike that. Is it a normal custom in District Court to have a sentencing hearing requesting aggravating factors after a plea of guilty and a verdict of guilty?

JUDGE DAVIS: Absolutely.

MR. DUMMITT: So it's the customary practice, or it is a customary practice, in District Court to have evidence with regard to sentencing put on after a verdict is entered by the clerk?

JUDGE DAVIS: Repeat that question.

MR. DUMMITT: Is it a usual practice in District Court to have a sentencing hearing about aggravating and grossly aggravating factors after the verdict was entered in District Court?

JUDGE DAVIS: In my case probably not, after I've heard from , assuming in this case it's a plea of guilty, after we've heard from the officer testifying as to what went on, then I usually ask the Defense Attorney if he has any questions, and then I ask the State are there any aggravating factors, and I ask the Defense Counsel if there are any mitigating factors, and go through that. When that is done then I would say that there was – a plea of guilty, a verdict of guilty, and then find what factors I have found and determine the level and enter the sentence, and I do that all at one time.

The only time that it would be different is if there were a plea of guilty, and there were a verdict of guilty, at that time then, if you will, the two parts of it would be segregated due to having to make a determination of the guilty portion of it.

MR. DUMMITT: After a Defendant has entered a plea of guilty in front of you, is the Defendant free to withdraw the plea, or is that subject to your approval?

JUDGE DAVIS: I don't have a legal answer personally, it would be my opinion that up until the time I enter the verdict, if he chose to change his plea I would allow him to do it. I don't know that there's a legal answer to that, or I don't know.

MR. DUMMITT: Okay, but the Defendant would have to make a motion to you requesting to withdraw the plea, is that correct?

JUDGE DAVIS: Well, I mean, I suppose so, yes.

MR. DUMMITT: And your order in this case specifically said that it was an entry of a plea of guilty, is that correct?

JUDGE DAVIS: Yes, no question it was a plea of guilty, that's correct, to the DUI.

MR. DUMMITT: And – no further questions.

MR. HALL: Your Honor, Judge Davis, this entry on the judgment marked, introduced as Defendant's 1, that reads, VD after entry of plea, was that something that you asked the Clerk to record?

JUDGE DAVIS: Yes, my recollection was, and I would stand to be corrected, but my recollection was that Mr. Dummitt asked that that be put on there, and that I did ask the Clerk to put it on

there. So we identified exactly when this dismissal occurred.

MR. HALL: And in your mind as the presiding judge, had you found this Defendant guilty and the voluntary dismissal taken thereafter, or had the voluntary dismissal been taken prior to your entering a verdict of guilty and sentencing this Defendant?

JUDGE DAVIS: I testified earlier that after – if I had found the Defendant guilty, I do not believe the District Attorney could have dismissed the case, there would have been other notations; and the District Attorney made a motion to set aside the verdict, and then would have done something, and there's no notation of that on the file.

MR. HALL: Nothing further.

MR. DUMMITT: I have another question based upon that. It is your recollection that there was, at the time of the entry of the plea to the DWI, a voluntary dismissal of the driving while license revoked as a part of the plea agreement, is that correct?

JUDGE DAVIS: It happened at the same time. I don't know if it was a part of the plea

agreement or not, but yes, it was a contemporaneous act.

MR. DUMMITT: I have no further questions.

THE COURT: All right.

MR. HALL: Nothing further from the State, Your Honor.

THE COURT: Any further need for Judge Davis, he can get back to his duties?

MR. HALL: Ask that he be excused. Thank you.

THE COURT: You say that's the evidence for the State?

MR. HALL: Yes, sir.

MR. DUMMITT: If I may have a moment, Your Honor.

(Mr. Dummitt confers with his client, off the record.)

MR. DUMMITT: No further evidence for the Defense, Your Honor.

MR. HALL: Again, the Defendant has the burden of proof. I will waive my argument to this Court, my initial argument to this Court.

THE COURT: Mr. Dummitt?

(COUNSEL'S ARGUMENT TO COURT OMMITTED)

THE COURT: I need to go over these cases, I so won't be able to tell you by 5:00 o'clock, but I will notify both sides once I make my decision on it. All right, and if for some reason between now and tomorrow morning the Supreme Court brings some case, or decides this issue, will y'all let me know?

MR. DUMMITT: Certainly, Your Honor.

THE COURT: Thank you.

(End of proceeding.)

NORTH CAROLINA

FORSYTH COUNTY CERTIFICATE

THIS IS TO CERTIFY that the foregoing transcript of proceedings taken at the 10 December, 2001 Regularly Scheduled Session of Criminal Superior Court for Forsyth County is a true and accurate transcript of the proceedings as taken by me in stenotype and reduced to typewriting under my direction.

This the 10th day of September, 2002.

s/ Deborah Cashion
Deborah Cashion, Reporter

Transcript ordered by receipt of deposit 8/4/02
Transcript delivered 9/10/02

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
COUNTY OF FORSYTH	SUPERIOR COURT DIVISION FILE NO. 00CRS055022
STATE OF NORTH CAROLINA	)
	) TRANSCRIPT
	) TRIAL – DAY I
JAMES CAREY WOOD	) VOLUME I

Transcript of trial taken in the General Court of Justice, Superior Court, Twenty First District Division, Forsyth County, North Carolina, on the 9th day of December, 2002, Criminal Session before the Honorable William Z. Wood, Jr. Judge Presiding.

APPEARANCES:

DAVID E. SIPPRELL
Assistant District Attorney
Twenty First Judicial District
Forsyth County, North Carolina
On behalf of the State.

CLARKE E. DUMMIT
Attorney at Law
213 West 6th Street
Winston-Salem, North Carolina 27101
On behalf of the Defendant.

Celeste Paxton-Jones
Certified Shorthand Reporter

DATE REQUESTED: 12/10/02
DATE DELIVERED: 1/24/03

I N D E X

MOTION PAGE

MOTION TO SUPPRESS 3
(Afternoon Session)

MOTION TO SUPPRESS (continued) 19

WITNESS

S.D. MITCHELL

VOIR

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NO. 1 DRIVING HISTORY REPORT
11

P R O C E E D I N G S

DECEMBER 9, 2003 – 10:00 A.M.

TRIAL DAY – I

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THE COURT: This is the case of State versus James Carey Wood. Mr. Wood, have a seat. He's charged with habitual DWI?

MR. DUMMIT: Yes, your Honor. We have filed a pre-trial Motion to Suppress for Lack of Articulate Suspicion.

MR. SIPPRELL: Your Honor, Mr. Dummit - -

THE COURT: What's the alleged date?

MR. SIPPRELL: August 25th, 2000 and morning hours of - -

THE COURT: August? What does it say on the indictment?

MR. SIPPRELL: Should be 26th, 2000.

MR. DUMMIT: 26, 2000.

MR. SIPPRELL: That's correct. Let me read our motion. I've got a double jeopardy file that's been heard by Judge Pryer.

MR. DUMMIT: That's been heard, your Honor.

THE COURT: Okay. I got a copy of the indictment, Mr. Dummit. I have a motion that's been filed as to Lack of Articulable, reasonable Articulable Suspicion.

MR. DUMMIT: Yes, your Honor.

THE COURT: I don't see it in the file, Lack of Articulable Suspicion.

MR. DUMMIT: We had one motion hearing, and decided not to hear this one until we heard the outcome of the first one.

(Brief interruption)

(Off the record).

MR. DUMMIT: Here is a copy of the motion.

THE COURT: Was it filed?

MR. DUMMIT: Yes, it was filed in March, either March ....

THE COURT: Did you find one?

MR. DUMMIT: It may have been stapled to the Motion to Dismiss and filed together.

THE CLERK: The only thing I've got is the Motion to Dismiss Certificate of Service.

THE COURT: Well, it's clocked in. Let's see the file. Let's go ahead.

Are you ready to proceed?

MR. DUMMIT: Here's a copy of the affidavit that was with it.

THE COURT: I looked at the affidavit. This is different from those.

MR. SIPPRELL: Your Honor, if I may apologize to the Court. Mr. Dummit was incorrect when he informed that the State's detective would have been voir dired prior to hearing this motion, because our officer currently is not available.

THE COURT: When is he going to be here?

MR. SIPPRELL: Definitely two o'clock.

MR. DUMMIT: We have some other pre-trial things, at least fifteen minutes.

THE COURT: Let's go.

MR. DUMMIT: I would like to make the Motion to Quash the indictment which was based upon the allegations alleges that there is a prior conviction of driving while impaired in the State of Georgia, and one, I have never seen any documentation other than some computer printout requests that the State has in their file. I have made several requests to get a copy of any document, but in either case, the allegation alleges driving while impaired conviction. The State's document, that they do have, is a driving under the influence conviction, and under Georgia Law, driving under the influence is a different standard.

THE COURT: Do you have a statute?

MR. DUMMIT: I do have a copy of a statute, your Honor. It is fairly lengthy, but I think it is only a few sentences that deal directly on point. I printed off everything . If I can just approach.

THE COURT: Have you served a copy on Mr. Sipprell?

MR. DUMMIT: The only copy I have, I went through this with David Hall about eight months ago fairly lengthily. But the Georgia Statute has a different statute. It says:

"Under the influence of alcohol to the extent that it's less safe for the person to drive."

And then Section 2:

"Under the influence of any drugs to the extent it's less safe for a person to drive," rather than appreciable impairment. I think that's substantially different. I mean, North Carolina has got a few cases directly on point.

THE COURT: Have you brought me some of them?

MR. DUMMIT: Well, I can go back and dig some of these out, Standard North Carolina appreciable impairment and ---

THE COURT: Appreciable impairment, mental capabilities or both, something to that affect.

MR. DUMMIT: I'm not a Georgia lawyer, but very clearly that statute, that wording is substantially different from North Carolina. I think it would be a different standard, clearly, because it's a different burden of proof element.

THE COURT: Mr. Sipprell.

MR. SIPPRELL: Your Honor, I certainly disagree with Mr. Dummit's interpretation. I do not have caselaw for you either at this time. It's the first time I heard about that.

THE COURT: Where's Mr. Hall, he probably knows.

MR. SIPPRELL: He was this morning about to fax – he was going to be attaching prior conviction in Georgia, but the statute requires the prior conviction to be substantially similar if it's in a different jurisdiction, or those words that

have any meaning and effect at all. You can't think that it's going to be the exact same law in North Carolina, substantial affect, to be some variation between their jurisdiction.

I think the fact Georgia requires to be less safe is synonymous with the North Carolina standard of being appreciably impaired. That's what makes the driving a misdemeanor. The fact that there is not noticeable impairment, either in the normal or physical, mental ability, I think those defenses does not supply that Motion to Quash.

MR. DUMMIT: With regard to this specific case, I think that the State has the burden to show substantially similar. I don't think sentencing is similar. I don't think the driving restrictions are similar. I don't think the element to actually proving it are similar.

THE COURT: How is it different:

MR DUMMIT: Let's say it's a lower standard than appreciable impairment. Let's say it could be anything, on e glass of alcohol and you can have somewhat less safe, a .01 is less safe than point.

THE COURT: I have seen appreciable after one glass of alcohol.

MR DUMMIT: That's possible, but that's a different standard. That's my whole point, that people are different weight. So you can have one glass of alcohol and you can be safe, than someone who has none; you can then be a .07, that could be less safe that a .08. It's a sliding scale, and less safe is just at the other end. It's completely different that North Carolina which is a strong ling, you must show appreciable impairment of mental and physical capabilities.

THE COURT: Or both.

MR. DUMMIT: Or both. It's just Georgia has the "slippery spondee" although the proof is less, one drink could make you less safe, and the fact or each individual case would be different, and that's what I'm saying, its their arbitrary pattern down there, very different than North Carolina.

MR. SIPPRELL: If I may briefly respond. The differences in the standard are simply only in their words,

not in their affect. The glass of wine may make someone less safe, that would be because their mental, or mental faculty had been appreciably impaired. That makes them less safe.

I don't know how you can be less safe, those two statutes are exactly the same. They are less safe because appreciably impaired. Again, the distinction I would like to make is a very small one and minute one, which means the statute and offenses are substantially similar. That's all that's required to be proven by the State sentencing, your Honor.

THE COURT: Thank you.

Mr. Dummit, I think I'd better deny your motion. It's a very interesting point, but, it appears to me that less safe and appreciable impairment of mental and mental/physical faculties are both, not the most precise standard. Appreciable means noticeable; that's the odor of alcohol; some slight difficulty moving; or failure to do the physical test right; or weaving in one's lane of traffic - - we have seen those, and I have to. It just depends on the actual evidence in the case.

But, in any event, I think the standard is close enough that I better deny your motion. I think there is substantial dissimilar.

What else:

MR. SIPPRELL: Your Honor, I'd like to be clear on the record with regard to what Mr. Dummit wants to do with regard to stipulation of three prior convictions. Doesn't want that evidence to be before the jury, and therefore, be a stipulation to the jury?

THE COURT: What do you want to do?

MR. DUMMIT: The problem I have is I haven't seen them yet. I have seen a printout.

THE COURT: You've got two ways: hold the State's feet to the fire and make him prove, or you can stipulate.

MR. DUMMIT: Your Honor, I've made multiple requests to look at them, and I have not seen ay of them yet.

So, I guess what I would ask is, I'd like to have an opportunity to look at -- any opportunity to see what they want to introduce against my client. If it's appropriate, I'll stipulate.

THE COURT: Sure. You got your evidence?

MR. SIPPRELL: Yes.

THE COURT: Let me see.

MR. SIPPRELL: I've shown his Carey's DHR NRDA, certified copy is intended to the Court.

THE COURT: Give Mr. Dummit a copy of whatever you intend to introduce. Probably better mark it as State's Exhibit 1 so the record will be clear on what it is.

(State's Exhibit No.1 admitted into evidence).

MR. DUMMIT: Direct the Court's attention, this is Exhibit No. 1 consist of one two - - three pages, and it appears to be a Driver's License History Report of James Carey Wood.

THE COURT: Yes, sir.

MR. DUMMIT: Your Honor, the first two pages appears to be some sort of printout from the Division of Motor Vehicles; the third page, I'm not certain what it is, but it's apparently not from the Division of Motor Vehicles.

THE COURT: "Driver's License History Report," is what is says.

MR. DUMMIT: That's the one I would request. It has something from another State. It doesn't have exactly what the disposition was, when the sentence was; and with regard to that, I don't think that proves a conviction. I think it's the appropriate way to do it and get the certified copies to see what exactly what the disposition was.

THE COURT: Okay.

MR. DUMMIT: I like to see all of that, because I have substantial argument to the jury as to whether or not – I think ultimately this is a jury question - - whether Georgia conviction is a third party.

THE COURT: If you're going to argue that, he's got to put on evidence on, doesn't he?

MR. DUMMIT: I agree. And from that perspective, I have to advise my client whether to waive the argument completely. Because I looked at the certified copy and statutes are similar, the wording, whatever it is, but I need an opportunity to look at that to tell my client whether or not I have a good jury argument with that or I don't.

THE COURT: It's your choice.

MR. DUMMIT: Well, I need to see the document, your Honor.

THE COURT: Mr. Sipprell, give him the document.

MR. SIPPRELL: With the Motion to Suppress,, this doesn't have anything to do with that regard. It's not a certified copy. It doesn't lay out - -

THE COURT: Does the statute require certified copies:

MR. SIPPRELL: I don't believe so. I do not have a copy of 15A.

THE COURT: You better get it. You got a case?

MR. SIPPRELL: State v. Ellis.

THE COURT: Cite?

MR. SIPPRELL: It is 130 N.C. APP 596. It's a 1998 case.

THE COURT: What judges wrote that opinion; who wrote it?

MR. SIPPRELL: Judge Pierce.

THE COURT: What did Judge Smith say?

MR. SIPPRELL: He said that ---

THE COURT: Don Smith?

MR. SIPPRELL: Doesn't have a first name, your Honor, just a last. Section A-35.2:

"North Carolina Statute does not meet (phonetic) such matter of prior conviction."

Section 15(A) – 1340.14 Subsection (f):

Prior conviction may be proved, by one, stipulation of the party; original copies of court record of prior conviction; three, copies of the record maintained by the Division of Criminal Information and Division of Motor

Vehicles, Administrative Offices of the North Carolina; any other method found by the Court to be implicit to the Court.' Certainly that these three pages consisting of the Driving History Report, first two from North Carolina other from Georgia , both of which have been certified, would certainly constitute.

THE COURT: How are they certified?

MR. SIPPRELL: Statement on both of them, your Honor, page 2, it says, "Certified as a true and copy of the driver's license record of " – name here – in as appeared, automotive system of DMV."

THE COURT: Is it signed?

MR. SIPPRELL: It is not signed, your Honor. It is part of a printout. Second page has, bottom of third, bottom of that has similar language as well, but slightly different language, and comes for a Georgia Department of Public Safety.

THE COURT: Mr. Dummit, you say that's not enough?

MR. DUMMIT: I don't think it is because this doesn't allow me to look at any of the information with regard to sentencing whether it's substantially similar. Anything that I need to be able to raise a jury issue would be my duty, as his attorney, if in fact, they are not substantially similar.

THE COURT: Let me see it again. I need to look at State's 1.

Okay, Mr. Hall, you went out and got a statute, what does it say?

MR. HALL: Your Honor, I haven't looked at it yet, but I would tell the Court this case is two years old. Mr. Dummit and I have had numerous talks about this case. Not once, not one time, your Honor, has he ever asked me to show him certified copies. Not once has he ever intimated that he would challenge and put

Called as a witness herein, who, after being first duly sworn, was examined and testified as follows:

VOIR DIRE EXAMINATION BY MR. SIPPRELL

MR. SIPPRELL: Q. Ma'am, state your name for the record, please.

A. Officer S.D. Mitchell.
Q. You work for the Winston-Salem Police Department?
A. Yes, I do.
Q. How long have you worked there?
A. Thirteen years.
A. Were you on duty August 26, 2000?
Q. Yes, I was.
A. What shift where you working that night?
Q. August 26th?
A. What shift were you working?
A. Second shift.
Q. What were you doing that evening?
A. Conducting a stationary license check.
Q. When was that

MR. DUMMIT: Objection your Honor.

THE COURT: State your ground.

MR. DUMMIT: As to conclusion, your Honor. I think she said what she was doing, and drawing a legal conclusion from it.

MR. SIPPRELL: I don't think there is any other way of what was described, other than that, the Court certainly takes note that certain description is ultimate.

THE COURT: Objection overruled. Go ahead.

MR. SIPPRELL: Q. Where were you conducting that license check, officer?

A. 3300 Block of Haley Drive.
Q. Is that here in Forsyth County?
A. Yes.

THE COURT: What block?

THE WITNESS: 3300.

MR. SIPPRELL: Q. How was that checkpoint set up?

A. It was set - -

MR. DUMMIT: Objection, unless she knows, your Honor. I think that one of the issues is whether or not the checkpoint is properly set up. Based upon the more recent decision out of the Supreme Court, that's an issue that a supervising officer makes the determination. And pursuant to 16A - - and get at the exact cite, but the law that authorize checking stations, your Honor, 2-10.3A, I would be happy to approach with that.

THE COURT: Hand it up. Thank you. Okay.

Objection's overruled.

Go ahead.

MR. SIPPRELL: Q. Madam, if you could explain to the Judge how that checkpoint was set up that night?

A. It's set up with supervisor designating location, too.

Q. Do you remember who the supervisor was?

A. Sergeant Freeland (phonetic).

Q. Okay. Continue.

A. Two or more officers, several vehicles with lights, blue lights on, facing different directions, several other vehicles maybe a block away from the actual checkpoint to stop vehicles if the are trying to allude the check points.

THE COURT: How many vehicles a this checkpoint?

THE WITNESS: At least eight cars.

THE COURT: Were they all at the checkpoint?

THE WITNESS: Yes, sir.

THE COURT: You had others some place, where?

THE WITNESS: We had others maybe a block away at turn-off street location with vest on.

THE COURT: Okay.

THE WITNESS: And flashlights, all yellow gear.

MR. SIPPRELL: Q. Any of those vehicles had their lights activated?

A. Two vehicles on each side of the direction, pointed opposite direction had their lights on.

Q. You said they had their lights on, head lights or emergency?

A. Emergency lights; everything except the siren.

Q. The supervisor that you mentioned earlier, the sergeant, was he out there on the scene that night?

A. Yes he was.

Q. What was the intention of setting up the road block there at this location at that time?

MR. DUMMIT: Objection your Honor.

THE COURT: Sustained.

MR. SIPPRELL: If I can inquire as to ground, so I know how to rephrase the question.

THE COURT: What's your ground?

MR. DUMMIT: I don't think she can say anything about the intention of her supervisor. It's not her frame of mind.

THE COURT: It is sustained to the supervisor's intent.

MR. SIPPRELL: Supervisor indicate to you, telling you – Did he supervisor have reason for telling you that the roadblock –

MR. DUMMIT: Your Honor, if I can be heard briefly, hand up some caselaw as well. I think the Edmonds case - -

THE COURT: I think you're familiar with that.

MR. DUMMIT: Since that case has come down - - may I approach?

THE COURT: Sure.

MR. DUMMIT: -- the intent of checking station is directly relevant. And, in fact, this checking station was set up two months before Edmond's decision was even handed down. I think that is going to become relevant in this hearing in this case.

*** (OBJECTION DISCUSSION OMITTED) ***

THE COURT: It's sustained. Go ahead

MR. SIPPRELL: Q. Officer Mitchell, which was the plan in regard to how many vehicles were going to be stopped at license-point, and in which manner of vehicle was going to be stopped?

MR. DUMMIT: Objection as to hearsay, your Honor.

THE COURT: Overruled.

THE WITNESS: We stopped ever vehicle coming through our checkpoint.

MR. SIPPRELL: Q. Is that, in fact, what happened that night?

A. Yes.

MR. DUMMIT: I'm going to object, if that's knowledge of what other officer is doing, or what she specifically saw.

THE COURT: You can ask that later. Overruled.

MR. SIPPRELL: Q. Now, Officer Mitchell, were you approached by any cars that night?

A. Yes.

Q. When the car would approach you, what did you do?

A. I asked the driver for license and registration.

Q. Did you ask that of every driver that you stopped?

A. Yes.

Q. What was your purpose in asking those questions?

A. To make sure they had a valid license and registration.

Q. Were there any signs posted, regardless whether or not there was DWI checkpoint?

A. No, there wasn't.

Q. What was your intention with regard to impaired drivers, if anything out there that night?

A. If I observed one, my intentions were to investigate it further and find out if they were driving under the influence.

Q. Is that what you were initially doing in regards to each car you stopped?

A. Not initial, no. My intention were valid registration and license.

Q. Did the police officer have any written policies procedures, at that time, with regard to conducting license check?

A. Yes.

Q. Were you aware of those proceedings at this time?

A. Yes.

Q. Do you recall what those procedures were?

A. I don't know them by memory, but I have a printout of our policy and procedures.

THE COURT: You got it with you?

THE WITNESS: Yes, sir.

MR. DUMMIT: May I approach the bench, your Honor?

(Perusing Document).

THE COURT: Was that, in effect, on day in question back in August of - -

THE WITNESS: Yes.

THE COURT: - - 2000

THE WITNESS: Yes, sir.

MR. SIPPRELL: Q. So, Officer Mitchell, let me ask you today, supervisor approved plans for the checkpoint that night?

MR. DUMMIT: Objection, your Honor, hearsay, pursuant to Tarlton.

MR. SIPPRELL: If I may be heard with regard to that. Irrespective of the Tarlton case that Mr. Dummit handed up and what the case says, it clearly does not say that hearsay is admissible. It just merely says that defendant may waived that objection, but according to not only other caselaw, but North Carolina Rules of Evidence clearly state –

THE COURT: Which rule?

MR. SIPPRELL: 8C-1.

THE COURT: 8C, "Charles," dash 1. Okay, I don't have that rule. I've go 106, I've got 8081 through 806 that deal with hearsay.

MR. SIPPRELL: Fortunately, I've got my Motor Vehicle Statute down here.

THE COURT: What does it say?

MR. SIPPRELL: It says that:

"The Rules of Evidence do not apply in hearings that determine the admissibility of evidence, except rules concerning privilege."

THE COURT: Hand it up, let's see it.

MR. DUMMIT: Your Honor, I agree with that. This isn't admissibility of evidence. This is a question of whether or not the stop was constitutional. I have a right to confront witnesses with regard to that.

MR. SIPPRELL: I believe, your Honor – I may be mistaken – I believe the title of his motion is a motion to suppress, and if we're not suppressing evidence, I don't know what we're here to suppress.

THE COURT: Let me see what you've got.

MR. SIPPRELL: If I may approach.

THE COURT: That's just about probable-cause.

MR. SIPPRELL: The last page.

THE COURT: "Hearsay and establishing probable-cause, for arrest for reasonable suspicion of stop render ..." (reading).

(OBJECTION ARGUMENT OMITTED)

****

THE COURT: Come on back up, Ms. Mitchell. Let's have the officer get on the stand. Let me sustained the objection. Let's proceed. I appreciate you giving me the Edmond case. The Edmond case did remind me about that narcotics case. Go ahead.

MR. SIPPRELL: Thank you, your Honor.

VOIR DIRE EXAMINATION BY MR. SIPPRELL (RESUMED)

MR. SIPPRELL: Q. Ma'am, I think what I was asking with regard to the proceedings of the Winston-Salem Police Department, in effect, at that time you say Sergeant Freeland was your supervisor that night?

A. Freeland.
Q. Freeland. And was he on the scene?
A. Yes, he was.
Q. On the scene?
A. Yes, he was.
Q. Are there, at least according to your personal observation, three uniform officers present?
A. Yes.
Q. You wearing reflective traffic vest?
A. Yes.
Q. I believe you testified early that there was two other vehicles that had their emergency lights activated?
A. Yes. There are two other vehicles, police vehicles that had their emergency lights activated.
Q. Was the marked patrol vehicle in a conspicuous location?
A. Yes.
Q. The license check, to your knowledge, cause any unreasonable delays for motorists on Healey Drive that night?
A. No.
MR. DUMMIT: Objection, your Honor.
THE COURT: I'll overrule it.
Go ahead.
THE WITNESS: No, it did not.
MR. SIPPRELL: Q. Do you know why that particular location was chosen for a license checkpoint?
A. Due to the heavy flow of traffic.
Q. Was that place, where you had established a checkpoint, was that mainly visible to either direction of travel?
A. Yes, it was.
Q. Was there a space that direct vehicle out of the roadway through the vehicle that wants to be stopped?
A. Yes.
Q. Where was that?
A. At various private parking lots on both sides of the street, and also a Cul de Sac.

Q. At any time that night, did your supervisor tell you to be looking for impaired drivers?
A. Not directly, no.
Q. At any time that night, was that your intention to stop vehicles?
A. No, it wasn't.
Q. At any time during the night when you were out there, did you let a vehicle go through without it being stopped?
A. No, I did not.
Q. At any point did the defendant come through that license checkpoint?
A. Yes, he did.
Q. Were you there when he came there?
A. Yes, I was.
Q. Did you stop his vehicle?
A. Yes, I did.
Q. What was your purpose for stopping the defendant at that time?
A. License and registration check.
Q. Did you ask him anything when he first came up to you?
A. When I approached his vehicle, I asked him for license and registration.
Q. Did you ask him if he had been drinking or anything at that point?
A. Not at this point.

MR. SIPPRELL: I don't have any further questions with regard to Mr. Dummit's objection at this point

VOIR DIRE EXAMINATION BY MR. DUMMIT

MR. DUMMIT: Q. In fact, there was a white male officer with brown hair that actually stopped his vehicle on the road, wasn't he?

A. No, I stopped his vehicle.
Q. Do you recall when you were over on the side and came up to him about three minutes after he was stopped?

A. We were working it together. I stopped his vehicle.
Q. You said, "we work it together," who were you working with?
A. All the other officers on my squad.
Q. Do you recall which officer came up to him and held his hand for him to stop?
A. No, I don't.
Q. So, you don't recall which officer it was that stopped him in the road?
A. No.
Q. And you were over on the side of the road and he got diverted over onto one of these private parking lots or that Cul de Sac?
A. No I was in the middle.
Q. But you don't recall which officer that first stopped him?
A. No. I don't recall who was standing right next to me, no.
Q. And that officer directed to go over to the side of the road, and you approached him and started to speak to him?
A. No, I directed him to go to the side of the road, not the side of the road, into the parking lot.
Q. So, you were the officer that directed him into the parking lot?
A. Yes.
Q. Was that your procedure with every single car that came through to direct them into the parking lot?
A. If a car came through and did not have valid license or registration, either direct them into the parking lot or they were further up, you direct them to get to the side of the road or into the Cul de Sac.
Q. Do you recall where he was directed to?
A. Into the parking lot of a private business, right before you get to the Cul de Sac.
Q. What was that business, do you recall?
A. I don't recall the name of the business.
Q. Do you recall the officer who was out in the middle of the road that stopped him?

A. Well, when we direct traffic, one officer was standing, holding out his hand for vehicle to stop like their going to stop; then the next officer go to the window, asks for license and registration. If that officer is not doing anything, he'll go to the back and check the tag and "okay," if everything is valid.

Q. Would you let him go if you smelled an odor of alcohol?

A. No.

Q. So an odor of alcohol allow somebody to get diverted into the secondary checking station?

A. Yes.

Q. Even though there is no sign of impairment, but the odor of alcohol, do you divert somebody into the secondary checking station?

A. For safety purpose, we'll check to see if its is safe for them to drive if we smell a strong odor of alcohol.

Q. What if they look suspicious, would you sometimes check them out, divert them over into the parking lot and check them out?

MR. SIPPRELL: Objection your Honor. If you can qualify what, "look suspicious" is.

THE COURT: Overruled.

MR. DUMMIT: You can answer.

THE WITNESS: What do you mean by "suspicious"?

MR. DUMMIT: Q. Well, if somebody looks suspicious, did you ever divert somebody over into a secondary place to check them out for public safety?

A. Not, if they look - - "safety"? I don't know what you mean by safety.

Q. If he smells suspicious, do you divert them over to the secondary station?

A. We detect the odor of alcohol, second location for safety purpose to see if they can drive.

Q. What if you smell some other odor that your unfamiliar with, you divert them over to the secondary station, too?

A. If we smelled, for instance, marijuana, that's probable-cause to conduct investigation further, yes.
Q. What if you smelled some odor your unsure of, do you diver them over to the secondary checking station?
A. I smell odor that I'm not familiar with, that cause me to stop somebody other than drugs or alcohol.
Q. What if they appeared to be stuffing something under the seat as the approach the license check, did you divert them over to secondary safety check for your safety?
A. No.
Q. And if they have a bottle of liquor in a brown bag next to them, did you divert them over to secondary checking station then?
A. If I can tell from looking into the vehicle in plain view it's a bottle, bottle of alcohol, I would see if the cap is open; the law says you can't have it open inside a vehicle.
Q. So you would see if the bottle was open to make sure they were in compliance with all the laws?
A. Yes.
Q. Even if nothing suspicious that happened, and there was not.
A. If there was no open container in that brown bag.
Q. What if they came through and didn't have registration immediately available, but it was in the glove-box, would you divert them over to the secondary station?
A. If it's in the glove-box, open the glove-box and obtain it.
Q. But you require them to show registration before they are allowed to pass; isn't that correct?
A. Correct.
Q. And you require them to show the driver's license before they are allowed to pass?
A. Yes.
Q. Is there anything else you require them to have before you allow them to past?
A. Valid inspection sticker on the front of the vehicle.
Q. What about inspection certificate in the glove-box, do you check that?

A. No. Inspection sticker has the valid date and month on the windshield. We don't have to check the papers where they had vehicle inspection.
Q. Sometimes those stickers are forged or glued on, and they look a little cracked. Did you ever check to see if they look cracked?
A. Yes, they do.
Q. At that point, did you divert them into secondary station?
A. Yes.
Q. So inspection sticker looks cracked or a little off, you may divert them to where the secondary location check?
A. If it looks like it's been altered, we would have them go to the second location and investigate further.
Q. Is there any other reason you would ever divert them into secondary checking station?
A. If they don't have their driver's license or registration - - sometimes people know the driver's license number - - would have them go to that location, they give them a number or name, and they call and make sure they have a valid license, just don't have it in their possession.
Q. What if the odor of alcohol is extremely fine, do you still divert them into secondary location?
A. I find an officer.
Q. So, officers have broad discretion when they are going to divert somebody into the secondary station?
A. Discretion. I wouldn't say broad discretion; it's the officer's discretion.
Q. Can you define what the moderate odor or slight odor of alcohol is?
A. If I walk up to a vehicle, and I can smell an odor of alcohol, I would ask the person to pull over and let me investigate further.
Q. That's your standard. Do you know what the other officer standards are?
A. I can't testify to what another officer's level of smell is.

Q. Is there anything in your training or experience, in your written directives that define what an order of alcohol is that causes someone to get diverted into secondary checking station.

A. No.

Q. So, with regard to alcohol, odor of alcohol, that is purely a discretionary call with the officer?

A. On the person; officer's as well sense of smells.

Q. Yes?

A. Yes.

(OBJECTION ARGUMENT OMITTED)

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Q. When you smelled the odor of marijuana, do you search the person to confirm whether or not they have any?

A. No.

Q. Do you search the vehicle?

A. No, I don't. It depends on the officer.

Q. So, the officer has discretion whether they are going to search the person or not, they smell marijuana?

A. It depends on the officer, yes.

Q. Have you been trained in your situation to look at the totality of the circumstances?

A. yes, I have.

Q. So, if somebody had dreadlocks and smells like marijuana, are you more likely to search them, than you know . . .

A. No, no. That's profiling. I don't agree with that. Profiling, I don't do that.

Q. So, in your discretion when you decide once somebody is stopped at the license' check and divert them into the secondary station/checking station, do you have a discussion with them in the road before you do that or?

A. No, I do not. I have discussion when I pull them off the road and let the other traffic continue to flow.

Q. What if somebody can't find their license quick enough because it's buried in their wallet, do you then divert them into the checking station at the side of the road?

A. If their checking for license, I give them a few moments to look.
Q. And allow traffic to back up?
A. Well, if traffic is backing up, I pull them into another location, and they have to look. If they have to look for a long period of time, I give them a chance to pull them over to the side of the road to look for it.
Q. But you're not going to let them pass without seeing them?
A. Not without seeing the license.
Q. Is there anything in your written directive that defines how long to hold somebody on the side or center or the road before their diverted into the secondary checking station?
A. No, there isn't.
Q. So that's the officer's discretion as well?
A. Yes.
Q. With regard to registration, are some registration not reasonable because their too dark, too faint to the light, have you had this experience?
A. It depends on the wear and tear of the registration, yes.
Q. Do you ever divert people in secondary checking station so you can get better light at the check post?
A. You have the flashlight, so you can see with the flashlight. That's all the light you're going to get.
Q. Do you know how many cars came through this checking station that night?
A. Oh, I can't say how many; at least hundreds. I can't say.
Q. Do you know what time this checking station was scheduled to end?
A. We don't set the time. We just go with that month that we're working, what we call tac. So, it depends on man-power. If we're needed somewhere else, we have to shut down and go there. So, we don't set a designated ending time.
Q. So it's completely the officer's discretion how long this last?

A. It's the supervisor's discretion.
Q. When you say you were working tac, can you tell me what tac is?
A. Tac is a shift that you work, each squad works once a year. Basically you handle, as utility squad, handle the problems within the city that may need extra attention such as location for heavy traffic, its flow, speeding; location for heavy crime areas, you're assigned to those locations according to your supervisors.
Q. So the purpose of a tac unit is to investigate generally high crime areas are held to deter?
A. No, not to investigate high crime areas. Use of tac is to put more man-power in the location where we have a problem for that month or officer that needs it.
Q. Just general crime control?
A. Yes.
Q. On this occasion, your entire unit was working tac, general crime control?
A. The west-side tac unit. We have both tac units on each side of town. We were just the west-side tac squad.
Q. Do you have any first-hand knowledge about any excessive break-in's around these businesses there on Healey Drive?
A. No, we didn't have, not to my knowledge.
Q. Do you have any knowledge whether there are any excessive numbers of people driving down Healey Drive that don't have driver's license on them?
A. No.
Q. Do you have any personal knowledge whether there are excessive numbers of cars driving down Healey Drive that don't have registration?
A. No.
Q. Do you have any first-hand knowledge whether or not there are excessive number of impaired drivers driving down Healey Drive?
A. No.
Q. How often have you worked a tac unit?

A. Each squad works at least once a month once a year. Some squads work it twice a year, depends on how your squad prorates.

Q. Do you have a report with you today?

A. Yes, I do.

MR. DUMMIT: May I approach, your Honor?

THE COURT: Sure.

MR. DUMMIT: May I take a look?

May I ask questions from here, your Honor?

THE COURT: No, you'd better . . . .

MR. DUMMIT: Just need to ask you a few question. If you need this, please let me know, officer.

Q. While you had Mr. Wood at that checking station diverted into the secondary area, did you call in this information about his driver's license or driving history, or did you do that later?

A. I have to see my report. It's been two years. I don't remember.

MR. DUMMIT: May I approach, your Honor?

THE COURT: Sure.

THE WITNESS: (Reading).

What was the question again, sir?

MR. DUMMIT: Q. At the time that you had Mr. Wood diverted into the secondary checking station in a parking lot, did you radio in to find out what his prior criminal record was or did you find out that later that night?

A. No, not his criminal record, his driving record, yes, not his criminal record. He called in to see if he had valid driver's license, not his criminal record.

Q. Did you do that personally or did another officer do that?

A. I don't recall. We work together. I don't recall.

Q. On Page 2 of your report down near the bottom, somebody has the approve this report. Who's the second signature next to yours?

A. Sergeant F.A. Freeland.

Q. He's your supervisor?

A. He was my supervisor. He's now retired.

Q. Do you recall what type of vehicle Mr. Wood was driving?
A. (Perusing notes).
He was driving a 1987 black pick-up truck.
Q. That was after you looked at your report, right?
A. Yes.
Q. You didn't have an independent recollection?
A. It's been two years. I don't remember what happened two years ago without looking at my report.
Q. Is there anything in your report that lays out who was the first one to make contact with Mr. Wood?
A. From the way my report is written, it's apparent that I made the first contact.
Q. You say it's "apparent" from the way your report was written. Can you point out where in your report it makes that apparent to you?
A. Mr. Wood state's that his license was suspended.
Q. It's routine for one officer to relay one information from another officer?
A. If you approach the car and you talk to the driver, that's the officer that handles that vehicle.
Q. That's the way it's normally done?
A. Whomever approaches the driver's window is the officer that handles the vehicle. You may have an officer that goes around to the back and checks the tag and states it's okay or it's not okay. But the officer that approaches the window, first one made contact with the driver, is the one that handles that vehicle.
Q. That's the way it's normally done?
A. Yes.
Q. But there are many occasions, I'm sure, that you can recall where things – out on the scene in the dark, with multiple things going on, don't go exactly as they normally do; is that correct?
A. Well, I never encountered one where it's been planned.

Q. You have no specific independent recollection when he spoke to a white male with dark brown hair in police uniform with regard to his license?
A. I don't have any recollection of it.
Q. So, your testimony today is based purely upon a sentence in here from your report twenty eight months ago?
A. I'm sure he spoke. There were other things that were conducted where he had to have spoken with another officer once he was pulled into the parking lot.
Q. Do you recall, specifically, not based on assumption out of your report twenty-eight months later, but specifically, whether you were the officer that he made that statement to or whether it was another officer that diverted him?
A. He made a statement to me.
Q. Do you recall whether or not it was another officer that he made a statement to, to the window that diverted him into the secondary station?
A. No. I "checked" the window (perusing report), was my call, he spoke with me.
Q. Out of this checking station, were there officers there with Alcosensors?
A. With Alcosensors.
Q. The hand-held?
A. There were held Alcosensors, yes.
Q. Do you have an Alcosensors?
A. No, I'm not certified with the Alcosensors.
Q. Do you recall if an officer gave Mr. Wood an Alcosensor at this checking station?
A. Yes, he did.
Q. Do you recall what officer did that?
A. Officer T.L. Perkins.
Q. Do you recall how long my client was detained before he was given an Alcosensor?
A. I can't tell you how long he was detained before Alcosensor was administered.
Q. Can you tell me how long he was detained in secondary checking station prior to being arrested?

A. No more than five minutes between each Alcosensor; say , ten minutes to give a standard test, no more than 20; 10, 25 minutes, 15 to 25 minutes.
Q. That's your estimate today?
A. Yes.
Q. Do you know what time he was initially detained?
A. No, I don't. Initially stopped?
Q. Yes.
A. No, I do not.
Q. Would looking at the violation you wrote refresh your recollection with regard to that or is that only an approximation?
A. The citation is the time that we make the arrest, and we take him down to the Breathalyzer, let communications know what we're doing, and that's when give us a time.
Q. Do you have a copy of your citation there?
A. No, I do not.
MR. DUMMIT: May I approach, your Honor?
THE COURT: Sure. Does this refresh your recollection?
A. Yes.
Q. Can you identify what that document is?
A. It's the defendant's copy of my citation.
Q. Are you the one that filled that out?
A. Yes.
Q. In the upper right-hand corner, did you indicate it was one o'clock when you made the arrest on this occasion?
A. Yes.
Q. Do you have an independent recollection of that?
A. No, that's what's on here, that's what time it was. I don't remember.
Q. That's your handwriting; is that correct?
A. yes.
Q. It's our policy that that time is given when you made the decision to arrest?
A. Yes.
Q. Do you know how long he was detained prior to you making the decision to arrest him?

A. No, I don't know. Like I said, between 15, 20 minutes, 25 minutes prior to.
Q. So, do you have any indication of what time Alcosensors were given?
A. Yes, I do. It says Alcosensor given by Officer Perkins 00440044 hours; and another 10053.
Q. Do you recall, whether or not, he was contained for some time before that first Alcosensor?
A. I don't recall if I gave him the sobriety test before the Alcosensor or after the Alcosensor, normally Alcosensor is normally I depend on the officer, I don't remember if I gave it to him before or after.
Q. It's not conceivable that he was there a good 40 minutes before the Alcosensor was given?
A. I don't think he was there that long, no?
Q. You didn't set up any notices to the public that they were entering a DWI checkpoint pursuant to 20-16.3A did you?
A. No my supervisor did not.
Q. And, to your knowledge, you don't know whether there was any likelihood of catching people that were driving without a driver's license?
A. Those were our intentions.
Q. But do you have any first-hand knowledge about when there was a high rate of people driving without a driver's license that posed some great threat to the public?
A. No.
Q. On this specific checking station on this evening, were officers stopping cars going in both directions?
A. Yes, they were.
Q. How many officers were out on the road to your recollection?
A. I don't remember the exact number of my squad at that time, but it should have been at least eight officers and my sergeant.
Q. There were side streets that lead away from this; is that correct?
A. Yes, there was.

Q. They were officers posted there, is that correct, on the side streets?
A. There are side streets prior to getting to our checkpoint. Officers were sitting there if someone seemed to be trying to allude the traffic stop, yes.
Q. So, if somebody turned right, down a side street, before entering this checking station, it was your understanding that they would be pulled over?
A. Officer would try to stop the car and find out why they turned off. Sometime you have people that live within that distance and they would turn off to go home, and you actually sometimes have people trying a allude traffic stop.
Q. So, it was that policy that night if somebody turned on a side street before entering this checking station, part of the checking station was to pull them over and to see whether or not they would have a valid reason to turn?
A. Yes.
Q. Was there any systematic plan to have people take alcohol screening tests at this checking station?
A. No.
Q. Do you know how many Alcosensors were used on the scene?
A. From my knowledge, that we have on hand, one. There are only some officers that are certified.
Q. Do you know how long traffic was backed up behind them prior to being - -
A. Two years ago, no, sir, I don't remember.
Q. There weren't any escape convicts of anything like that that you all were out there specifically looking for, were there?
A. No, there was - - they were not.
Q. Have you been trained on these checking stations?
A. We don't have specific training, no.
Q. Okay. Do you have a copy of the Winston-Salem Police Department's General Order effective 12-10-1996?
A. Yes, I do.

Q. To your knowledge, was this the General Order that was in effect on the day you pulled over, that you detained Mr. Wood?

A. Yes.

Q. Under the Roman Number II:

"Training: Officer will conduct stationary license check in accordance with the established departmental training and procedures."

You have not received any training or procedure specifically with regard to checking stations; is that correct?

A. No that's stating officers will conduct a stationary license check according to our training or procedure as to vehicle stops. Every officer is trained on how to train - - on how to conduct a license check. And that's just putting in, affect, the stationary license check.

Q. I'm sorry. I don't . . .

Is there or is there not any departmental guidelines or training or procedures for license checks?

A. Yes, there are.

Q. Have you received any established training in this area

A. Yes, I have.

Q. What is that training?

A. It's training on how to approach the vehicle when you conduct a license check.

Q. How many license checks have you participated in, to the best of your knowledge?

A. Thirteen years of service, sir. It's anywhere between 200 to 800. I have no idea. Thirteen years, I've done a lot of traffic stops, vehicles every day.

Q. But you believe over 200 licensed checks you set up?

A. Not 200 stationary license checks.

Q. How many stationary license checks have you participated in?

A. On the average of one every time we conduct a tac, say, so that's thirteen - - at least 20.

Q. How many stationary checking stations, pursuant to Paragraph I of your directive, specifically dealing with

impaired driving checking station 20-16.3A, have you participated in?

A. I never participated in a DWI checkpoint.

Q. To your knowledge, do you know if the Winston-Salem Police force has done any DWI checkpoint pursuant to 20-16-3?

A. Yes, they have.

Q. Do you know when the last one was?

A. No, I do not.

Q. Do you know hoe many they've done in the last two years?

A. No, I do not.

Q. But you personally have never participated?

A. No, I do not.

Q. On the night in question here, do you know how many people were given a citation out there that night?

A. I have know idea.

Q. On this night, where Mr. Wood was stopped at this checking station, do you know how many people were charged with driving while impaired?

A. No, I do not.

Q. Do you know if it was more than one?

A. The sergeant on that night kept stack. I have no idea. I just remember my DWI that night. I don't know how many were given that night.

Q. Do you know whether or not there was a drug dog on call with your tac team?

A. There should have been, but I can't say for there absolutely was. We try to have one on call each night.

Q. Do you know whether or not there was a drug dog brought out to this checking station?

A. No, there wasn't.

Q. You were dealing defining the tac squad, and you have used the term utility squad. Can you described what that is?

A. It's like a floating squad of officers, one for each side of town, and we use, at the chain of command, to dispose whatever they need us to do that night.

Q. You were at these checking stations. Did you ever check whether or not somebody is a United States citizen or not?

A. No.

Q. When you were at this checking station, do you recognize a valid Canadian license?

A. No, I don't. I can't say what other officers recognize.

Q. In your training and experience - -

THE COURT: Have you seen a Canadian license at one of these checkpoints?

THE WITNESS: No, I haven't, sir.

THE COURT: Okay.

MR. DUMMIT: Q. Have you ever received any training and experience in whether something is a valid Canadian license or valid or invalid?

A. No. No training, no.

Q. If somebody presented a driver's license from a foreign country, do you detained them in a secondary checking station, or do you allow them to pass?

A. Normally they would tell us it's from a foreign country.

Q. "Normally." Do you know?

THE COURT: Have you ever seen one from a foreign country, a license?

THE WITNESS: I stopped one lady that was from a foreign country, but it wasn't at the stationary license check, just a basic license stop on Peters Creek Parkway.

MR. DUMMIT: All right.

Q. Do you have any training and experience as to whether or not the United States, which is North Carolina, recognizes foreign driver's licenses as valid?

A. I don't have any specific training on that.

Q. Do you have any training as to whether or not a Mexican driver's license is valid in North Carolina?

A. We have had training that Mexican license is not valid in North Carolina due to the heavy flow of Hispanic population.

THE COURT: Mr. Dummit, what does a Mexican license have to do with this case?

MR. DUMMIT: Discretionary license check; whether it's a valid license check. Just a few more questions.

Q. If somebody presented a Mexican license, would they be diverted into the secondary checking station?

A. Yes, they would, because it's not valid in the State of North Carolina.

Q. If somebody presented a Canadian license, would they be diverted into the secondary checking station?

A. I'm not sure, sir. I have never seen a Canadian license.

Q. Is there a policy that you have been trained, pursuant to checking stations policies, as to the facts that Canadian license could go through the Mexican license?

A. No, I - - - there isn't.

Q. So that's a discretionary call of the officer?

A. If you saw the Canadian license, you would pull that person to the side and check and see if it's valid.

Q. Is that something in your training and procedure or is that's discretionary?

A. No, it's not.

Q. Pardon me?

A. Not to my knowledge.

Q. So it would be up to the officer in their discretion?

A. Yes, it would.

MR. DUMMIT: No further questions.

THE COURT: Anything else?

MR. SIPPRELL: Fortunately, just few follow-up.

THE COURT: Sure.

VOIR DIRE EXAMINATION BY MR. SIPPRELL

MR. SIPPRELL: Q. Officer Mitchell, at the time defendant first drove up, in your approach to the window, was there anyone else in the vehicle with him at that time?

A. No, I recall.

Q. You testified early that you had smelled a strong odor of alcohol come from the defendant. What point did you smell a strong odor of alcohol?
A. When I asked for license and registration.
Q. Is that before or after you asked him to pull over to the secondary location?
A. I detected a strong odor of alcohol before I asked him to pull over to the parking lot.
Q. When you asked for his license and registration, was he able to produce one?
A. No, he wasn't.
Q. Why was it that you asked him to pull over to the secondary location?
A. Because he stated, told me that his license were suspended.
Q. You said your supervisor had not put up any signs with regard - - regarding or stating this was a DWI checkpoint. Can you tell the Court why the supervisor did not put up any other sign?
A. Because it wasn't a DWI checkpoint. It was just a stationary license check.
MR. DUMMIT: Objection to the conclusion, your Honor.
THE COURT: Overruled.
MR. SIPPRELL: Q. You said there was no plan out there that evening to take Alcosensor. Do you know if there would have been a plan for people to be submitted to the Alcosensor if it was a DWI checkpoint?
A. I did not say there wasn't a plan for no one not to take the Alcosensor. I said the Alcosensor was there in the event that we had a DWI. Alcosensor was there for that purpose.
Q. Was there a systematic plan to give Alcosensor that night?
A. No, there wasn't.
Q. Would there have been such a plan if this had been such a DWI point, to your knowledge?
MR. DUMMIT: Objection.

THE COURT: Overruled.

Go ahead.

THE WITNESS: It hadn't been a DWI checkpoint. But I would assume that if you would run a DWI checkpoint, you would have assistance for giving the Alcosensor.

MR. SIPPRELL: Nothing further on follow-up, Your Honor.

THE COURT: Okay.

VOIR DIRE EXAMINATION BY MR. DUMMIT

MR. DUMMIT: Q. Really brief. Do you recall whether my client had registration in the vehicle?

A. I don't recall if he had registration.

MR. DUMMIT: No further questions.

*** (MOTION ARGUMENTS OMITTED) ***

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